No. 5949

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

THOMAS W. NEALON, Trustee, and J. J. MACKAY, Creditor,

Appellants,

vs.

GEORGE W. SHUTE, Bankrupt,

Appellee.

Upon Appeal from the United States District Court for the District of Arizona.

VOLUME II.

(Pages 433 to 894, Inclusive.)

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

No. 5949

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

THOMAS W. NEALON, Trustee, and J. J. MACKAY, Creditor,

Appellants,

vs.

GEORGE W. SHUTE, Bankrupt,

Appellee.

Upon Appeal from the United States District Court for the District of Arizona.

VOLUME II.

(Pages 433 to 894, Inclusive.)

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

(Testimony of Orme Lewis.)

Q. Now, there is a direct contradiction between this statement and the testimony of Judge Shute at the various hearings, is there not?

A. I presume the record will show.

Q. Didn't Judge Shute testify definitely to various items going to make up the $1900.00 deposit on December 31, 1927?

Mr. MOORE.—Your Honor, I think this is going too far to examine this witness as to what Judge Shute testified before a certain hearing.

The COURT.—Well, if he doesn't remember, he may call for the report. I really don't see that it is material to ask this witness what he testified to from the record. It speaks for itself.

Mr. NEALON.—He has put in a statement which I presume is intended to explain satisfactorily the disappearance of assets and this statement was first produced eight days after the filing of [384] the specifications of objections in here. Now, the trustee was entitled to any information that the bankrupt had it could get at the time of his filing his petition in bankruptcy. It was his duty to have ascertained that fact.

The COURT.—That is not the point. You are asking this witness to state what Judge Shute testified to at the examination.

Mr. NEALON.—Well, merely because it contradicts this statement—the statement that this witness has produced and I think I have a right to do that and it goes to the credibility of this statement.

(Testimony of Orme Lewis.)

The COURT.—The statement itself is not binding upon the referee—I mean to say the trustee. It is merely a memorandum made to enable the trustee and now the Court to more readily examine the record and aid in a decision of the matter before the court. It is not offered as an absolutely correct statement, as I understand it. I do not have any objection to him answering these questions, if he can do so, but it is asking a lot of a witness to remember just exactly what another witness testified, especially in view of the fact that you have that reporter's notes that positively—possibly could be identified.

Mr. NEALON.—Well, I thought that the witness should have the opportunity to explain those things on the stand, as a matter of fairness to him.

The COURT.—Well, he is not asking for that.

Mr. NEALON.—Q. Now, Mr. Lewis, can you point out to me where, among the original records, we could obtain the source from which the $1900.00 deposit of December 31, 1927, came? I asked you that question before but you did not answer it.

A. Well, I might as well answer it now. I told you, I believe, that on December 27 there were certain items which were not satisfactorily explained. At that time, I asked Judge Shute regarding them, so that you would have the information. [385]

Q. You mean to say, do you, that, from the original records furnished me, we could not have obtained that information; is that right?

(Testimony of Orme Lewis.)

A. Well, let me see—I will try and think a minute. Well, I will tell you, Mr. Nealon, you could have had that information, because I told you that it was not only from these papers and dead checks, which don't talk very well, but you had an opportunity to prepare this yourself, with the co-operation of Judge Shute and myself, which co-operation was offered time and time again.

Q. Judge Shute had testified already, had he not, about the $1900.00 item and the source from which it came?

A. Yes, he had testified in regard to it and it was quite a while afterwards that he found out where this money came from.

Q. He testified that more than $900.00 of it came from Miss Wentworth, didn't he?

A. I don't recall.

Q. And he testified that $500.00 came from Wesley Goswick, didn't he? A. I don't recall.

Q. And he testified that probably the other $400.00 came from Miss Wentworth, didn't he?

The COURT.—I have read all of that testimony.

A. I don't remember.

Mr. NEALON.—Pardon me, your Honor. I am not asking these questions to delay any proceedings but I thought it was necessary.

The COURT.—I say, I am perfectly familiar and I think I remember that testimony better than the witness does, because I have just read it.

A. I recall testimony in regard to various items. I think it was the examination during May.

(Testimony of Orme Lewis.)

Mr. NEALON.—Q. Now, Mr. Lewis, the information that is in this statement you never gave until the 27th day of December, did you, [386] either to the trustee or to anyone else connected with the case?

A. We furnished to you prior to that time.

Q. You did? A. Yes.

Q. Did you furnish to me information that Wesley Goswick had paid $2,000.00 to Judge Shute on December 31, 1927? A. Yes.

Q. When and where?

A. Judge Shute furnished that to you when he told you about the Goswick transaction.

Q. And that was on November 24, 1927, that he told me anything about the Goswick transaction, wasn't it?

A. Oh, I don't recall the date. I am just telling you.

Q. Nothing was told until, by digging into the records of the bank, we found that this check had been transmitted to Globe for collection?

A. Judge Shute did not know about it until he told you.

Q. He did not know that he had received it?

A. Could not remember it but I don't know why I should testify for Judge Shute.

Q. I don't either. You were not present at the meeting at which Mr. Sylvan Ganz was present, were you, on June 15? Wasn't that the time that you were away and Mr. Robert Armstrong appeared?

(Testimony of Orme Lewis.)

A. Now, wait. I thought I was there at that meeting when Sylvan Ganz was there. Was it the June 15 meeting, Miss Birdsall?

Miss BIRDSALL.—Yes, Mr. Lewis, I think that was the time you were away. Mr. Robert Armstrong appears on the record as appearing.

A. I, for some reason, thought that I was there.

Mr. NEALON.—Q. Now, Mr. Lewis, in regard to your wanting to get these checks in time to make a statement earlier, may I call your attention to the fact that you were away for a while in June?

A. Yes, I was away for—oh, almost three weeks. [387]

Q. And that I left here in August and did not return until about November 5; you know that, do you not? A. Until when, November 5?

Q. November 5.

A. You left the last of August, didn't you?

Q. I think about the 12th. I won't bind you down on that. You knew about the time I left?

A. Yes, I knew that you left town.

Q. You knew that during that period I was not physically able to furnish you with any information, do you not? A. Yes.

Q. Now, let me ask you if these checks were not placed in your hands prior to my leaving here in August?

A. Well, if that is correct, I won't deny it. The checks were not the things in this that held things up. The fact that I did not have the statements to work against the checks was—

(Testimony of Orme Lewis.)

Q. Those were available at the bank, were they not?

A. Well, to be frank, they were available at the bank but we had already—you had already gotten copies of them and we had already gotten copies of them and I did not like to work them any more.

Q. Didn't Mr. Losch of the bank assist you in making up these statements, to some extent, or was that merely furnishing information?

A. He furnished me information from his books. He did not assist me in writing up the statement at all.

Q. You know that during a part of that time Miss Birdsall was away and the young lady in her office was working on making the lists in regard to those checks, do you not?

A. Well, that may be so. I called up one time, I recall, and the girl in the office said that Miss Birdsall had the statements with her and, naturally, she could not give them and then, I think, [388] that it was just a short time after that that you, Miss Birdsall, called me and told me about them.

Miss BIRDSALL.—I just did not want it to appear that we voluntarily delayed you in getting those.

A. It is not so much whether it is voluntary or not. It is beside the point. It is merely the question of not being able to get them for one reason or the other.

TESTIMONY OF THOMAS W. NEALON (THE TRUSTEE), FOR THE BANKRUPT.

(Witness for the Bankrupt.)

(Examination by Mr. MOORE.)

I am the trustee in this bankruptcy case. I filed objections to the application for discharge and, among other ground, I have alleged that the bankrupt has conveyed certain property and concealed other property. One is the lease on his house. One is the Creed note. One is the Noble note. One is the phonograph. One is the Globe house. One is the Essex car.

Q. There is, perhaps, other items. Those are the outstanding ones?

A. At least, all of those are involved.

Q. Have you, as trustee, instituted suit in any court for the purpose of setting aside what you claim to be fraudulent transactions or produce in your possession property which you claim that the bankrupt has withheld?

A. Yes, before the referee, I have asked for a summary order for the Essex car.

Q. Who did you cite on that?

A. Just a minute, please. For the Essex car, for the Noble note, for two other items in there—if you will give me them now— [389]

Q. All of them you know to be claimed by Mrs. Shute and to be in Mrs. Shute's possession, do you not? A. I do not.

(Testimony of Thomas W. Nealon.)

Q. Isn't there testimony in this case to that effect?

A. No, the testimony is to the effect, to illustrate, the Essex car is community property.

Q. That is a conclusion of law.

A. Well, now, wait a moment. If it is, you asked me a question and I want to answer it.

Q. All right. Go to it.

A. All of this community property and, as a conclusion of law, I feel that the statutory agent of the community, Judge Shute, was in possession of that car and that proceeding is upon that theory.

Q. You knew that Judge Shute disputed that issue of law, did you not? A. Yes.

Q. Have you gone to any court to decide that issue of law and to decide whether or not that car is community property or separate property?

A. I have, under the provisions of the bankruptcy law, brought the proper action in the referee's court —proper, as I understand it, to obtain that.

Q. You have instituted no suit in any other court to reduce any of this property to possession?

A. No. May I tell you why I brought that in the referee's court?

Q. No, I am not concerned in that, just so long as you have not instituted suit in any other court. Have you brought any action against any individual in whose possession this property is alleged to be, for the purpose of reducing it to your possession?

A. Please give me that question again in detail as to the [390] properties.

(Testimony of Thomas W. Nealon.)

Q. Well, have you brought any suit against anybody to recover possession of the house in which Judge Shute lives under lease? A. I have not.

Q. Have you brought any suit against the Creeds to recover an amount of money which you claim they owe Judge Shute?

A. No, that note is not due.

Q. Well, have you brought a suit against Joe Noble to recover an amount of money that you claim he owed Judge Shute?

A. I have not. I haven't had the possession of the note. I have been demanding it and the first time it has been produced has been here in this courtroom.

Q. You know that you do not have to have possession of a note to bring a suit. Have you brought a suit against Mrs. Shute to get possession of the notes? A. No.

Q. Have you cited her in the bankruptcy court to produce this Essex car and any of this property that she claims?

A. No. I had her brought into the bankruptcy court and, from the examination there, came to the conclusion that her possession was only colorable—her title was only colorable and, therefore, the referee had jurisdiction of the matter.

Q. Still, you haven't taken a chance to try out that case in the civil court?

A. I am trying it out in the court which has jurisdiction of the matter, unless I am wrong in my conception of the law.

(Testimony of Thomas W. Nealon.)

Q. You have brought no suit against Mrs. Shute? She is not in the bankruptcy court?

A. Possession of the property is in Judge Shute, in my opinion. He has testified that he drove it and she testified that he drove it and that they used it between them as they desired.

Q. Have you brought any suit to settle the title to the property [391] in Globe?

A. No, but I intend to.

The COURT.—Let me understand there, Mr. Nealon. Do you mean to say that where a husband gives to his wife an article or piece of property that it is still in his possession?

A. Not if he was competent was the word I used. I mean, if he was legally competent at the time to make the gift. You know our allegation in that, if your Honor please, that he was insolvent but there is further testimony all through the record that Judge Shute was using that car practically all of the period that the Hudson car was in the possession of the A. E. England Motor Company and at other times and Mrs. Shute's own testimony in there was sufficient to convince me was in the statutory agent of the community.

The COURT.—Do you mean to take the position that under the Arizona Community Property Law that a husband may not give personal property to his wife?

A. When he is insolvent.

The COURT.—Q. Under any condition?

A. No, but when he is insolvent.

(Testimony of Thomas W. Nealon.)

The COURT.—Q. You mean by that he has no power to contract?

A. Oh, no, not to contract but to give.

The COURT.—Q. To make a valid conveyance to his wife?

A. Oh, no.

The COURT.—Q. When he owed debts?

A. Without consideration, yes, that he has no power. I think the case of Lewis vs. Herrera is clear on that point, if your Honor please. That is a case in this state that went to the Supreme Court of the United States.

The COURT.—Q. In other words, if one is insolvent, do you hold to that extent or one who is merely indebted?

A. Oh, no, the man must be insolvent. Here is my theory of the [392] law and, sustained I think by a decision of the United States Supreme Court, under the common law, as well as the decisions in this state and by the terms of our statute on fraudulent conveyances. That is that if he makes a gift or makes a conveyance without consideration, without retaining sufficient property to pay all of his debts, that that is an absolutely void transaction as to creditors.

The COURT.—Q. In a civil proceeding?

A. The bankruptcy statute, I think, specially provides that the trustee may have the benefit of that, even though it is not the creditor interested in the proceeding.

The COURT.—I understand that, but, did that,

(Testimony of Thomas W. Nealon.)

in your judgment, furnish sufficient basis to charge this bankrupt with making a fraudulent conveyance and of perjury?

A. Yes, that is my opinion, if your Honor please. My opinion is that that should have been listed as community property. He might have stated—in other words, I think it was the duty of the bankrupt to have made a frank disclosure of these matters in his schedule. I think that that duty is greater where a man has been on the bench for many years and is charged with knowledge of the law.

The COURT.—Well, everybody is presumed to know the law but you know the Community Property Law has been a source of much discussion, not only among laymen but lawyers and I am trying to get at your reason for charging him with perjury and fraud, in view of that well known situation in Arizona and in California, and, in view of the decision of the Supreme Court of the United States and with reference to joint returns in California and the present case pending here in this court with reference to the right to make joint returns—I don't know the name of it—

A. Koch case?

The COURT.—I don't remember the name of it. What I am [393] interested in is not determining whether there was any mistake by Judge Shute in his construction of the Community Property Law but *but* whether or not he has committed the offenses with which he is charged.

(Testimony of Thomas W. Nealon.)

A. Of course, that is it.

The COURT.—Nor am I interested in knowing whether he correctly or his clerk correctly interpreted the law in making income tax returns.

A. That, if your Honor please, was introduced as an admission against interest, showing that for years they had treated that as community property.

The COURT.—Q. Treated what?

A. The Globe property in this income tax return. That was the main purpose.

The COURT.—Yes, I so understood it.

A. I thought it had great bearing upon that one question but you asked me if I thought that that was sufficient to base a charge of that kind in regard to the Essex car. I do, especially in connection with the testimony that is already in the case, both of Judge Shute and of Mrs. Shute, which testimony I had before this proceeding.

The COURT.—Q. Do you think that when a man gives his wife a car or a phonograph or something of that sort and that the records of the dealer—the fact that he drives it around publicly and apparently he had the right to make those presents to his wife was sufficient to base a charge of fraudulent concealment of property—that particular property, which is not concealed at all, and perjury in connection with that property?

A. I think it has been so held in quite a number of bankruptcy cases, if your Honor please, that where the conveyance has been made to the wife under the guise of a gift—

(Testimony of Thomas W. Nealon.)

The COURT.—No guise about it. It was a plain open gift, was it [394] not?

A. Well, in one sense and purpose, it was. In the other sense, he was charged with knowledge of the law and with knowledge that he could not make that gift.

The COURT.—When a man conveys property to some third person, without consideration, for the purpose of concealing it from his creditors, that is one thing but where there is a dispute as to the construction of the community property statute and a dispute as to the legal right to convey it or on this summary proceeding that you refer to—the question is whether or not the Court is justified in concluding that under those circumstances a bankrupt should be denied his discharge on the ground he has committed perjury or entered into a fraudulent transaction with intent to defraud his creditors. Now, in other words, do you take the position that because he gave his car to his wife or that he gave it to her that that was sufficient grounds to bar his discharge and to stamp the transaction as fraudulent and also to constitute perjury?

A. I think it certainly does, to this extent anyway, that after his attention has been called to it he still makes no effort to bring it into the bankruptcy proceedings. Now, that part, I don't see that there could be a question between anybody.

The COURT.—Well, if a man thinks he has the right to convey a piece of property to his wife or

(Testimony of Thomas W. Nealon.)

give a piece of property to his wife, while he might not have that right and the car might have to be returned in the proper proceeding in court or any summary proceeding, would that be held to be the proper proceeding—is it right to charge such a one with perjury in connection with things of that sort —of actual intentional fraud?

A. If he is charged—he is charged with knowledge of the law. Now, I think that that matter would be a matter of construction.

The COURT.—It might be possibly constructive fraud or legal [395] fraud—I don't mean that—which would justify the return of the property or recovery of the property but the matter we have up now is whether or not there is anything there to show actual, intentional fraud knowingly committed with a corrupt purpose and intent. I merely wanted to get your theory upon which you are proceeding as trustee in a matter of this kind.

A. Well, now, you mean as to these particular items—

The COURT.—As to the specifications of fraud and perjury.

A. In general?

The COURT.—In general and in particular.

A. Well, now, in general and in the—take, for instance the first of them, the Hudson car, there is direct testimony in the record here that Judge Shute placed that car in the hands of this man and states in his testimony that he was expecting litigation.

(Testimony of Thomas W. Nealon.)

The COURT.—I have read that he returned it to Mr. England, because it was not paid for and one who makes a sale of personal property, under the Arizona statutes, though no conditional contract is entered into, the purchaser may enforce a lien—there can be no claim of exemption and the purchaser could have repossessed the car from Judge Shute but, if he elected to return it to him, because he could not pay the balance, was that a fraudulent transaction?

A. One element is left out of your Honor's statement.

The COURT.—What element is that?

A. That is that this car, according to the books of the dealer, had been totally paid for—every dollar of it had been.

The COURT.—No, I don't so understand.

A. Had been paid for long before that time.

The COURT.—I don't so understand.

A. The three items are specific in there.

The COURT.—I don't understand that the last Hudson car had been paid for. [396]

A. The three items, and, if your Honor will look at that account book to the time that he paid $2,000.00 to—that appears in later testimony, I think; that he paid $2,000.00 to England and received back a check for some $764.00. The whole account shows only $14.15. That was a balance anyway and that can be easily ascertained from the account is for other matters than this car. Now, there are three items and connected up with is

(Testimony of Thomas W. Nealon.)
England's testimony and the other testimony, connecting those items up as being in full payment of that car, if your Honor please.

The COURT.—Well, I will hear you on that in the argument but I am merely making these statements so that you might know the matter that is in my mind.

A. I call your attention again, since we are on that particular point, as to Judge Shute's own testimony in the transcript that he had an interest in that car, expected to get it back but did not expect to get it back for the benefit of anybody else—something of that kind. Now, that is based, and I think the record clearly shows it and, besides that, if your Honor please, one week before the bankruptcy or ten days before the bankruptcy, Judge Shute made an oath that he owned that car, when he made that mortgage.

The COURT.—Well, I will hear you on that later.

A. Yes, these questions were directed as to my good faith, I suppose, in the—or rather negligence in not bringing actions.

The COURT.—Well, I understand that.

A. To explain that—

The COURT.—Yes, in connection with that, you are an officer of the court. You are not the representative of a creditor alone.

A. No.

The COURT.—You are trustee. You are an officer of the court and your duty is to gather in, for the benefit of the estate, all property which

properly belongs to the estate and, for instance, you take this life insurance policy, the question is whether or [397] not the life insurance policy has a surrender value and is the property of the estate is, as you know—for many years was a disputed question. I think that matter has been settled in so far as this Ninth Judicial Circuit is concerned that if there is a surrender value and the insured reserved the right to charge the beneficiary, if he knows that he has that right and we know that many people do not know whether they reserve that right or not. They take a policy and they are not concerned with whether they reserve that right to change the beneficiary but it has been a matter of dispute in the courts and among the members of our profession for years and years and it has reached that stage it has caused some of the states to pass a law, notably Michigan, to the effect that life insurance policies and the proceeds thereof are exempt from the payment of the debts of a deceased; not only so, but it includes the surrender value thereof. That is expressly put in the Michigan statute, so that if one goes into bankruptcy that—I said the deceased—I meant to say the insured; that under the Michigan law now that probably is not a part of the bankrupt's estate the surrender value is made exempt, as well as the policy and the proceeds thereof. That is not true in this jurisdiction but such matters have been in dispute among lawyers and there has been decisions throughout the whole country in conflict on that

(Testimony of Thomas W. Nealon.)

question and I remember, when they had it up here, when I was holding court here years ago, the question was threshed out, one set of lawyers contending that it was exempt and others contending that it was a part of the assets of the estate and, therefore, properly inventoried as such and, while all of these matters, it seems to me, can be threshed out in the proper way, whether in a summary proceeding of the court, the referee or in a suit, if that be necessary, what I want you and the attorney for the petitioning creditor to do is to show any active intentional fraud on the part of this bankrupt. [398]

A. Well, if your Honor please, I think I can furnish you with a direct case on this question of the insurance. I think the Supreme Court of the United States has also settled that question as to cash surrender value.

The COURT.—I don't question that. As I say, the Ninth Circuit has passed upon that and the Supreme Court has passed upon that.

A. Just passed upon it here in that Koch case and Judge Jacobs has passed upon it since in another.

The COURT.—I have passed on it here. It is not the question of the legal status of it. It is the question of the bankrupt's knowledge of the status of that and whether or not if he, in saying that it had no known value or cash surrender value—whether he was mistaken in the law but that does not necessarily mean that the statement was wil-

(Testimony of Thomas W. Nealon.)

fully and corruptly false. It may be that, as a matter of fact, it is a part of the estate and he is mistaken in that but that does not mean necessarily that there was any corruption or fraud.

A. Of course, we are getting a little off towards the argument but I would like to get that clear. The courts hold, so far as I have been able to find it, and I didn't make one of these without consultation of authorities, if your Honor please—

The COURT.—I don't question that, Mr. Nealon. I am not questioning whether you are correct in the law or not, and the legal status of the policy and the legal status of the community property but what I am concerned with is, even though the law says it is a part of the estate, whether there is anything in this record to show, even though the bankrupt was mistaken as to the law and was mistaken as to his right to make gifts to his wife, as many people would be under the circumstances, there is anything in there to show any active, intentional fraud. In other words, equivalent to the commission of a criminal offense.

A. I understand that. Now, if your Honor please, my construction [399] of that is, and I think I am sustained by authority in that, that the intent is presumed from the act and, when an insurance policy—a written instrument is introduced and they fail to schedule it, and, especially, that the presumption is that that was fraudulent and I think that is expressly true where the use of the blanks will show—where you might call them—are

(Testimony of Thomas W. Nealon.)

almost fool-proof—where they point out to you and ask you if you have any insurance policies and when the word "None" is inserted in under insurance policy, that should have been disclosed and then the question of law threshed out. If it had been disclosed, there would be nothing.

The COURT.—Perhaps so.

Mr. MOORE.—That was disclosed at the first meeting of creditors, your Honor, voluntarily, by Judge Shute.

A. With the statement that there was no loan value coupled to it.

The COURT.—Well, there might not have been at that time. There might not have been any loan value at that time or the bankrupt had not thought there was any loan value attached to it. There had been previous loans, had there not?

A. No.

The COURT.—No loans at all?

A. No loans at all on the property.

The COURT.—Well, it is rather unusual, if there is any loan value, that the insured does not take advantage of it.

Mr. MOORE.—Pretty good evidence that he did not know that it had any.

The COURT.—I merely wanted you to know what I am interested in and the situation of the case thus far. Of course, I want to hear the balance of the testimony but, while you are a witness, you being the trustee, I wanted to get your idea. I am speaking to you now as a witness and as a

(Testimony of Thomas W. Nealon.)

trustee and I am not speaking to you as a lawyer in the case at all, because, when the argument [400] comes up, then you will make such argument as you think proper.

A. Now, if your Honor please, I would like *to relieved* of any implication of negligence in there.

The COURT.—Well, you may go ahead and answer the question as to the question of negligence. You, as I understand, were proceeding according to what you conceived to be your right under the law?

A. Yes.

The COURT.—If you were, however, mistaken in your remedy, you made a mistake, that is all, but you are not culpably responsible and, if Judge Shute has made a mistake in believing that certain property is community property, the question is whether or not he should have been charged with fraud and crime.

A. I think that is a matter of defense.

The COURT.—Well, no, I think that—

A. We could not prove intent other than by—

The COURT.—You can prove it by circumstances.

The WITNESS.—All right, Mr. Moore.

Mr. MOORE.—Q. Mr. Nealon, hasn't Judge Shute, on many occasions, offered to assist you in every way possible, to come to your office or you come to his and go over the checks and data and records and explain any item and talk it over with

(Testimony of Thomas W. Nealon.)

you and help you in every way he could to arrive at the status of his financial condition?

A. Mr. Moore, in answer to that question, Judge Shute offered to make an explanation as to the checks. I thought that the proper place for that explanation was in the courtroom. Therefore, all of the explanations in regard to this have been asked so that they would be a matter of record in the proceedings.

Q. Now, Judge Nealon, did you think it was fair to call anybody on the witness-stand unexpectedly, not having any idea what he is going to be examined about, and flash a check or an item of a certain amount years old and have him explain it right off the reel? [401]

A. In those cases, Mr. Moore, he had the opportunity of explaining them afterwards, if he had asked time or anything else, yes, but my theory of that was and is now that he should have furnished this information to the trustee in the first instance and not put it up to the trustee to go through examinations of eight months to perform the duty that he is by law upon him.

Q. Well, now, just what have you in mind, Judge Nealon, he did not furnish you?

A. He did not furnish either a statement or a record book of any kind that would show his receipts and disbursements.

Q. Didn't he furnish you all he had?

A. No, he did not. He did not furnish us any information that would show receipts of the money

(Testimony of Thomas W. Nealon.)

from C. C. Julian. He furnished no information in regard to the $2,000.00 check from Wesley Goswick and we obtained that information through a search of the bank records. He did not—

Q. Now, Mr. Nealon—

A. May I finish answering the question? He did not furnish us any information in regard to the $1,000.00 paid before hand by Wesley Goswick, until we obtained the information by asking him to produce his income tax returns and his explanation there does not correspond with the explanation in the courtroom.

Q. Didn't he furnish you a bank statement showing that he had deposited $3400.00 in the bank and did you ask him the source of that in any place except on a sudden, unexpected question on the witness-stand to the source of it? Did you go to his office and say, "Now, Judge Shute, here is an item of $3400.00 appears on your bank account. Now, what is that?" Did you do that?

A. Mr. Moore, I did not and I would not do that in any case. Why should I go to his office and have the matter a matter of dispute between him and me afterwards as to what took place in his office? [402]

Q. Have you proceeded on the theory, from the very beginning, that Judge Shute was a crook in this case, Judge Nealon?

A. No. On the contrary, I accepted his testimony, as given before the referee, as correct but, under what I conceived to be what I should do as trustee, I asked for the documents sustaining that and, when I found them, I found that they did not

(Testimony of Thomas W. Nealon.)

correspond with his testimony before the referee at all in matters that were of recent date. As an illustration, I will say that Judge Shute testified that his income for 1927 from Armstrong, Lewis & Kramer was about $10,000.00. I accepted that as true and did not know anything to the contrary until the statement from the records of Armstrong, Lewis & Kramer was produced, showing that his income from that source for that year was $15,250.00.

Q. Judge Nealon, is it your opinion that any order made by a referee in a summary proceeding in bankruptcy, to which Mrs. Shute is not a party, could effect her title to the Essex car, the home or any of this other property that she claims?

A. Not if she has a title to it.

Q. That is just the point. A. Yes.

Q. You do not intend to have Mrs. Shute's title adjudicated in these summary proceedings?

A. As to the Globe property, she is not included —that is not included in any summary proceeding.

Q. Now, Mrs. Shute is not made a party to any summary proceedings that you have instituted to recover this property? A. No.

Q. Now, under your theory of this case, Mr. Goswick still owes Judge Shute something over $8,000.00, does he not?

A. Approximately that amount, yes.

Q. Now, what steps have you taken to reach that by writ of garnishment or other process against Goswick? [403]

A. The payments under that are not due. I have my own method planned for reaching that. I don't think that I should be required to disclose it in this

(Testimony of Thomas W. Nealon.)

proceeding, because I don't think it affects this proceeding.

Q. Judge Nealon, I am not concerned with what is in your mind. I am trying to find out what you have done. You have done nothing to intercept this money passing from Goswick to Judge Shute, have you, so far? A. No.

Q. Taken no action? A. No.

Q. Although it might be paid at any time and the payments are coming in to Goswick at the rate of $7500.00 a month?

A. It may be all paid now, for all I know, Mr. Moore.

Q. And then your remedy would be lost?

A. Oh, no, not by any means.

Q. Then, I presume it would be by summary remedy before the referee, would it?

A. Not necessarily. There is a remedy in bankruptcy proceedings for that situation, in my opinion, and a more effective remedy than what you suggest.

Q. Now, Judge Nealon, in answer to some of the questions, the Court asked one of the questions in particular in which you stated that Judge Shute had been guilty of perjury. You stated that in his examination before the referee, at the first meeting of the creditors, he stated that his income from the firm during 1927 was about $10,000.00 and that you subsequently ascertained from the statement it was $15,250.00 and, from the discrepancy between what Judge Shute stated on examination and shown by the statement, you came to the conclusion that he

(Testimony of Thomas W. Nealon.)

had wilfully, corruptly and falsely sworn to the first meeting; is that true?

A. I did not give that as my only reason, Mr. Moore. [404]

Q. But that was one of the reasons?

A. That is one of the reasons, yes.

Q. But there was additional reasons why you thought, in this particular, he corruptly swore?

A. Yes.

Q. Now, Judge Nealon, I desire to call your attention to the further statement and, in order that you may have it in your mind, Judge Shute was asked about his income during the preceding years and he says, "I think last year I received somewhere in the neighborhood of $10,000.00. That is about right, I think." That is the statement you have in mind?

A. That is exactly what I have in mind.

Q. Then, the next question following, you asked him, "You have no books available," and Judge Shute answered, "The firm books show my earnings." Did you take that last statement in connection with his first statement?

A. I don't quite understand, Mr. Moore.

Q. Did you take Judge Shute's testimony to the effect that the firm books would show his earnings in connection with his previous testimony that his income during 1927 from the firm was in the neighborhood of $10,000.00 and that he thought that was about right? A. Yes, I did take that.

Q. Wait a minute now. Isn't it a fact that within a few days after this first meeting, at which this testimony was given, Judge Shute furnished

(Testimony of Thomas W. Nealon.)

you with a statement taken from the books of Armstrong, Lewis & Kramer, which showed his earnings about $15,250.00 for 1927?

A. Now, I don't remember the date or how long it was.

Q. But that statement was furnished you voluntarily by Judge Shute at your request, wasn't it?

A. No, I would not say voluntarily. It was furnished after [405] that particular examination to which you have referred to, in which I asked for the amount of his income.

Q. That could not have been furnished before that, because this was the first meeting of the creditors, at which you were appointed, Judge Nealon?

A. No, I think it might have been furnished at the first meeting of creditors.

Q. In other words, he should have anticipated your curiosity?

A. This is not a question of curiosity, Mr. Moore. It is a question of the information which the bankrupt is in duty bound to furnish the trustee.

Q. Did he not furnish you that within a very few days after you were appointed trustee?

A. I don't know that it has yet been furnished, for the reason that I don't know whether Judge Shute has yet disclosed what income he has received prior to bankruptcy. What has been furnished has not been furnished to me except under demands.

Q. Hasn't he volunteered a number of times, both Judge Shute and Mr. Lewis, in open court before the referee, to assist you in furnishing everything within their power?

A. They have offered to explain about the checks.

(Testimony of Thomas W. Nealon.)

Q. Which they furnished to you?

A. A portion of which they furnished me. Some are missing. Not a great quantity—yes, there is a considerable quantity too—are missing, but the checks do not reveal the source of income or the business transactions, nor is there kept any account upon the stub book itself that gives any information in regard thereto and I learned from outside sources of income by Judge Shute, which I have never learned from him by any disclosure either of records of testimony.

Q. Well, I presume, Judge Nealon, you refer to the Goswick transaction. Now, as a matter of fact, didn't Judge Shute come to [406] you and make full disclosure, some time in November, of the Goswick transaction?

A. I would say not. He did on the Saturday before Thanksgiving come to my office and give me the same figures that were testified to by Mr. McBride this morning. He also gave me at that time the information that he had received the $8,000.00 in June, but we had had a meeting on June 15, a few days subsequent to his receipt of that money, according to his testimony, in which the Goswick transaction had been discussed and he had given me no information of that payment.

Q. Well, did you ask him if he had received that payment on June 8?

A. I don't recall now whether I did or not. I had that information at that time.

Q. Well, you already had it, then. It was not necessary for him to disclose it, Judge Nealon?

(Testimony of Thomas W. Nealon.)

A. Yes, I had it. I got it by persistent exploration and examinations the same day that Judge Shute gave me the information.

Q. We are speaking about the examination in June. I asked you if you questioned Judge Shute about $8,000.00 at the examination on the 15th of June?

A. I don't know whether I did on the 15th of June or not.

Q. You just stated—

A. No, I didn't state, now, about that. I said about the Goswick transaction, that is, he had told about the sale—the last payment in June of $82,500.00, without mentioning his receipt of any sum in connection therewith but, in previous examinations, both Miss Birdsall and myself had asked him repeatedly questions as to whether he had received any other large sums of income of money and he said he had not and he was asked if he expected any and he said he did not.

Q. Now, at the examination on the 15th of June, at that time, [407] did you have knowledge of the Goswick transaction?

A. Not a bit of knowledge, other than such information as was in the income tax return and the testimony of Judge Shute that he had received $500.00 as a gift, because of his handling of the previous option on the property and, either at that meeting or at a previous meeting, he testified that he had received $500.00 more from Goswick in connection with the sale of some stuff that was salvaged from the property.

(Testimony of Thomas W. Nealon.)

Q. But, Judge Shute did come to you—that was on November 24, I believe you stated—and give you full information in regard to the Goswick transaction, the amount of money that he had received and just for the purpose of enabling you to trace it down and find the facts in the case, didn't he?

A. May I state it just as it occurred there?

Q. Yes.

A. Judge Shute called me up the morning of the Saturday before Thanksgiving and asked me if I could see him if he would come right away. I had an engagement and I told him that I could not see him then but I would call him up when I would get at leisure and, later in the day, I called him up and he was busy and we made an appointment for 2:00 o'clock. He came at 2:00 o'clock that day and gave me this information about the $20,000.00 and the $50,000.00 and information about the friction between Mr. Packard and Mr. Goswick and, I think, in the course—yes, he stated that he was giving me that information as a guide to me in examining those witnesses. I don't know that he mentioned them by name but I think we understood.

Q. At that particular conversation, did he not make it plain to you that, from his viewpoint, any monies theretofore paid him by Goswick and any monies that Goswick might pay him in the future were voluntary gifts from Goswick to him?

A. In every instance, he stated that they were gifts to him [408] whenever he testified in regard to it.

Q. Now, one of the charges you make against

(Testimony of Thomas W. Nealon.)

Judge Shute is he concealed the affairs of his partnership interest?

A. Is that charged as a specification?

Q. I think it is, Judge Nealon.

A. I don't recall it, that is.

Q. I may be mistaken. A. I think—

Miss BIRDSALL.—Failure to schedule, Mr. Moore. Failure to schedule, only.

Mr. MOORE.—Well, that is what it is. Anyway, it is charged in the specification as failure to schedule his interest in the partnership.

A. Yes, in the first schedule, there was no schedule—no item—nothing showing that he had an interest in the partnership.

Q. Don't you recall, at the first meeting of the creditors, which was the very day that you were appointed the trustee, he produced a copy of the partnership agreement and told you his construction of the old partnership agreement, of which, on a dissolution of the firm for any cause, he did not think he would have any interest left and quite a bit of discussion was had and he said that was a matter of law under construction of this contract? You recall that, do you?

A. Yes, I think that is almost exactly so. He said, in explanation of his testimony, that what he would have under the formal contract—that he was construing a written contract.

Q. One of your grounds of perjury is predicated upon Judge Shute's answer to a question in his first examination, in which he stated that there had been no dividend in April, was it not, and it later on developed, from the statement he furnished you, that

(Testimony of Thomas W. Nealon.)
there had been a dividend of about $725.00 on the 10th of April? [409]

A. I think that is correct.

Q. In making that charge, Judge Nealon, did you take into consideration Judge Shute's testimony at the same hearing, found on page 16 of the transcript of testimony taken at that meeting, where the following question was asked him: "Have you received any dividends since this was made?" Referring to the loan that was made at the National Bank of Arizona on the 7th of April, I believe. And, Judge Shute says, "No, I cannot tell whether the last dividend was on February 28 or April 2 but it was one or the other." Did you take that into consideration? A. I think probably I did.

Q. And, then, as I understand it, your predication of the perjury charge is based on the fact that on the 1st of May he testified in one place that there was no dividend in April and the next place he testified that there was a dividend, probably, on the 2d of April, he did not know which, the last case having been off seven days in his date? Do you think that is a serious, wilful perjury?

A. Mr. Moore, I think when you consider his testimony as a whole and on that date, it does show a very serious intent to deceive the trustee and the Court as in regard to the income. I think you will find other testimony in there that shows that. We were trying at that time to get an explanation of what became of the money that he had received from the First National Bank as a loan and these questions were very pertinent at that time.

(Testimony of Thomas W. Nealon.)

Q. Although he did furnish you a statement in a few days showing the exact amount?

A. You say a few days, Mr. Moore. I don't know that it was a few days. How long a time it was, I can't now say. I think the statement was furnished by Mr. Lewis. Perhaps he could give the accurate date.

Mr. LEWIS.—Why, one day, if you will excuse me—one day, in [410] the trustee's office you asked—I mean in the referee's office, you asked for a copy of that, because you did not happen to have one, and I notice, in looking through here, I gave you the copy on which was marked the date of delivery to you, so very likely it was among your papers. A. What date was that?

Mr. LEWIS.—I could not remember. It was quite a while ago. I had two copies and, unfortunately, I picked up the one and handed it to you that had the date of delivery marked, so very likely you have it among your papers.

A. Well, I introduced the copy that I have into evidence. There has been such a mass of papers, it may be that it is—

Mr. MOORE.—Q. Now, Judge Nealon, in regard to the life insurance policy, you predicate charges of both perjury and concealing property on that?

A. Yes.

Q. Did you take into consideration, in making that charge, that, at the first meeting of the creditors on May 1, Judge Shute, without being questioned at all in regard to his life insurance policy, said, "I would like to mention my insurance policy, just an ordinary life policy, and has no loan value

(Testimony of Thomas W. Nealon.)

whatever, so I did not list it," and you asked him, "Is it an old line company?" "Yes." "Is it a term policy?" And Judge Shute replied, "It is what is called an ordinary life." And you asked him, "Have you ever borrowed any money on it," and he stated it had no loan value. Did you take that statement into consideration in connection with the fact that at the next meeting of creditors Judge Shute produced the policy and exhibited it to you?

A. Yes. I also took it in connection with the fact that in his schedule he had reported, in the blank provided for that purpose as to insurance, none; that he coupled wtih his statement that he had the policy and that it had no loan value. If I had accepted [411] Judge Shute's statement without further investigation, I would never have ascertained the fact that he had a policy that did have a loan or cash surrender value.

Q. As I understand it—

A. I coupled it with the fact also that he did not list that policy, I think, in his second schedule. That is my recollection of it now. And with the further fact, if I recall correctly, that there is a loan value expressed in the policy.

Q. And you did not think the fact that he had not exercised that loan value, in view of his evident financial distress, was of no bearing?

A. I could not say that there was any evidence of financial distress at that time; rather, a filing of a schedule showing assets in a sum of about $290.00, when there were considerably more assets in his possession.

(Testimony of Thomas W. Nealon.)

Q. Well, then, Judge Nealon, do I understand you to think that every man who does not agree with you—your own construction of law or contract or title is a perjurer and a crook?

A. Certainly not.

Q. Well, isn't that the basis on which you predicate your charges of concealing, it is a difference of opinion in regard to the law or the title or rights?

A. No, I think not. Now, Mr. Moore, I predicated that charge upon investigation of cases.

Q. That is a question of law, isn't it?

A. Pardon me. Where the language of the court held specifically that the concealment of a policy with such a value was grounds for opposition to the discharge.

Q. Undoubtedly that is the—

A. And I ground it further on this, Judge Shute had before him the written contract and the examination of that contract itself would have disclosed to him that fact that that did have this value. [412] My recollection also is that at that meeting a statement was made in regard to the fact that such policies were an asset of the estate.

Q. You did not resolve any question of doubt at any time or give Judge Shute credit for honest intentions and good faith in any period of this proceeding, have you, Judge Nealon?

A. Yes. As I said this morning, I accepted, when I went in there, the statement of Judge Shute at the first meeting of creditors as being an absolutely true statement of the facts. When the record of

(Testimony of Thomas W. Nealon.)

his earnings with Armstrong, Lewis & Kramer showed such a wide discrepancy between his testimony and, when I considered that the date of his check for his income tax return—I could not figure it conceivable that he could have forgotten that difference in the length of time between that examination and the time of filing his income tax return or even the time of the calculation of his earnings in Armstrong, Lewis & Kramer, nor can I yet.

Q. Judge Nealon, you heard Mr. La Prade testify this morning in regard to the Cornelius transaction? A. Yes.

Q. His testimony was substantially the same as that given by Judge Shute on his examination, was it not?

A. No, and yet I don't know that the difference in it would be material as to this proposition. I will point out the difference, if you wish me to.

Q. Did you ever interview Arthur La Prade to verify Judge Shute's testimony in regard to that transaction?

A. No. I think his subsequent statements and actions were sufficient basis for the charge. You will recall, Mr. Moore, that Mr. La Prade testified this morning that he did not know whether the money that Judge Shute paid him had ever been paid over to this man. Now, I thought that if Judge Shute had gotten in this [413] money—had paid out this money, he would have some knowledge of some kind of it which should have been listed and then it was for the trustee to examine

(Testimony of Thomas W. Nealon.)

whether it was an asset or not of the estate or whether a thing to be rejected as worthless.

Q. According to your construction of law, if a bankrupt fails to list something that is absolutely worthless as an asset, is he guilty of perjury in concealing assets? A. Now, that is argumentative.

Q. I just want to get your viewpoint.

A. No, that is not my viewpoint. My viewpoint as to this particular transaction was that there was an asset of the estate and, as that has been paid over by Judge Shute since that time to me as trustee, I take that as an acknowledgment that there was such an asset of the estate.

Q. Now, as I take it, Judge Nealon, you are not at all biased or prejudiced against Judge Shute in this matter?

A. No. I would be glad to see him clear of the whole thing. I have no feeling in the matter whatsoever.

Q. No, I would so judge but, Judge Nealon, Judge Shute turned over to you that—When any controversy came up as to whether or not it was an asset of the estate or own private property, didn't he turn it over to you and—Take that check of $250.00?

A. Yes, my recollection is that he turned over the original check, when the point was made, and he said he would not argue about it or something of that kind—same statement.

Q. And, evidently turned it over to you very

(Testimony of Thomas W. Nealon.)

quickly after he received it from La Prade and that he turned over La Prade's original check, didn't he?

A. I don't know about that, Mr. Moore.

Q. Now, let's look it over.

A. I was wondering this morning as to what time that was done.

Q. Now, let's pursue that a little further. Isn't it a fact [414] that, when Judge Shute turned over to you that check from Arthur La Prade, he told you that he did not think that, under any theory of the law, you were entitled to it but it was a voluntary payment by La Prade, without any obligations, but, in order that it might be settled without controversy, he would give you the check, the $250.00, and you asked about the phonograph and you stated that you would be glad to do the best you could for him along that line?

A. Let me explain that, will you, please. It is not quite as you—

Q. Yes.

A. I would have been glad to forget about the phonograph and Judge Shute did discuss a payment of two or three items in there and I think practically requested me to forget about the contract. He afterwards sent me a letter with the check, in which—that is my recollection of it—with the check, in which he said that it was in settlement of these amounts so as itemized. I sent the check back and stated to him that I had no authority to do that but that I woud present the matter of the phonograph and I did.

(Testimony of Thomas W. Nealon.)

Q. And the—

A. No, pardon me. I did not tell the whole story. Judge Shute and Mr. Lewis came to my office afterwards with the check and said that they paid it to me without any conditions but, I think, made the same remark that they would—

Q. In other words, they were rather depending on a gentleman's agreement, were they not, Judge Nealon?

A. No. There was a limitation to my authority and it was paid over without any conditions, with the understanding that I would report the case to the creditor that was interested and the Court and see whether they would consent to the phonograph being dropped from the proceedings.

Q. I don't imagine the creditor was any more prejudiced against Judge Shute in this case than you are, is he? [415]

A. I don't know anything about that. They have had friction. They were former friends, as I understand.

Q. There wasn't much chance to accomplish anything. That is all, Judge Nealon.

Cross-examination by Mr. DYER.

I am familiar with Specification A First, objection to the discharge of the bankrupt in regard to the Hudson car. I felt in making that specification that I was justified in so doing and I was actuated in making that specification by the testimony at the hearings which showed that the condi-

(Testimony of Thomas W. Nealon.)

tional sales contract had been recorded against this; that subsequently a mortgage to the First National Bank had been recorded as against it; that Judge Shute had delivered the car to the A. E. England Motor Company, testifying first that he had turned it over; that in that testimony he had spoken of anticipating litigation; that subsequently he had stated that he expected to get the car back and that there was about a thousand dollars due on it and the books of the A. E. England Motor Company being produced in evidence and showing that the car had been paid for entirely either on the day that the instrument was recorded or the day following, the payments being made in three payments; that there was nothing due to the A. E. England Motor Company by Judge Shute, other than a balance of fourteen dollars and some odd cents; Judge Shute's testimony that he did work for him besides and the fact that Judge Shute had refused to give me an order on England for the car; that instead of driving it as he usually did, he testified that he was driving Mrs. Shute's car, as he called it; the Essex car and the further testimony that at the time that he refused to give me an order on England for the car he stated that he would pay me the blue book value for it, regardless of the encumbrances, and that he [416] actually thereafter bought the trustee's interest in the car under trustee's bill of sale for the sum of $900.00, and the testimony of A. E. England given on the stand that Judge Shute had placed it in his business place

(Testimony of Thomas W. Nealon.)

and given, also, the testimony in a very hesitating manner, in which he stated about half of the work "litigation," as Judge Shute was expecting litigation or trouble or something of that nature. There were probably other matters in the record itself that influenced me in that, together with the fact that this car was not listed in the bankrupt's schedules—I am speaking, now, of the first schedule—nor was the debt to the First National Bank listed as a secured debt, which if it was listed, should have shown the fact that Judge Shute had such a car. Those facts, I figured, constituted clear evidence of a concealment of an asset of the estate from the trustee.

I have not as trustee of the bankrupt, the insurance policy. That was returned to Judge Shute, in order to procure a loan and avail himself of his rights under the policy. He produced it in court and it was delivered to him this afternoon and I have asked Mr. Moore if he would send for it.

Mr. DYER.—I want to show the policy itself, your Honor.

The COURT.—I have examined it.

Mr. DYER.—I did not see the policy personally but, on the second page, it has set out there loan values and cash surrender values.

The COURT.—I don't suppose there is any question about that.

Mr. MOORE.—No, we admit that, in big box-car letters.

(Testimony of Thomas W. Nealon.)

Mr. DYER.—So that there could be no question of legal interpretation. It spoke for itself.

The COURT.—You gentlemen agreed that it might be returned, upon the reading into the record of a certain paragraph of it.

Mr. DYER.—Well, personally, I did not know.

Q. I believe you stated that that was based on the fact that in the original [417] schedule, under the head of insurance policies, he stated "none" —written out?

A. Yes. That, in connection with his testimony that it had no loan value. In fact, when I asked Judge Shute to produce the policy, at that time, I supposed I would find that it was a term policy and had no value but I thought I should examine it.

Q. Now, in reference to the Specification First C, state whether or not—

Mr. MOORE.—Now, your Honor, we object to trying this case in a roundabout way here through a prejudiced witness or through any witness at all except the record in this case—direct testimony. We are proceeding in a roundabout way asking this witness why he filed this and why he filed that and right on down the line, trying to establish each one by indirect testimony. Now, the savings bank account, Judge Nealon knows nothing of that, except what he heard; that there was a savings bank account and it was concealed. The records prove that and that is the way to prove that. It is not a proper method of proving charges. Their case has been rested and they quit.

Mr. DYER.—Well, it is a most peculiar situation that a party can call a witness and examine him and ask the character of questions that he has asked Mr. Nealon, some of which had a peculiar personal tendency and a reflection and that if he believed these things constituted perjury and a false oath. Now, I have a right to go in on cross-examination.

The COURT.—You are not cross-examining. You are purposing to prove the charges—to prove that he had reasons for making the charges against him.

Mr. DYER.—I am asking him to justify it. They brought this all out on direct examination—why was he justified and what made him do it. I am going into it further myself to show further why he did it. [418]

The COURT.—I sustain the objection.

Mr. DYER.—Your Honor, I wish to ask the same question as regards each specification.

The COURT.—That is the reason I sustained the objection. I anticipated that.

Mr. DYER.—But I want the exception.

The COURT.—As not proper cross-examination and as not tending to prove any issue in the case but merely the reasons of the witness for filing each particular charge and the basis of such charge. If you are entitled to prove that at all, it should have been in your case in chief and it is not cross-examination of the witness.

Mr. DYER.—I think it will be but we wish to except and let the exception stand to the same ques-

(Testimony of Thomas W. Nealon.)

tions which would be asked in reference to all of the objections, your Honor.

The COURT.—It may be extended through all the specifications. It may be noted on behalf of the trustee also. That is merely a summing up of the case and it may properly be made during the argument.

A. The only thing—I was asked, as an officer of the court and the trustee, did I consider myself justified in those—

The COURT.—Yes.

A. And I thought I had the right and the grounds of the justification on which they were based. That was my theory of that. I may be entirely wrong.

Mr. DYER.—Q. Isn't it a fact that the policy was not produced until the meeting of June 15?

A. I cannot tell you that, Mr. Dyer. I think it appears in the testimony—in the transcript of testimony before the referee but I cannot tell which meeting it was produced at.

The COURT.—That was at the first meeting, wasn't it, Mr. Nealon?

A. No, sir, it was not produced— [419]

Mr. MOORE.—Policy produced at the meeting on the 29th.

The COURT.—29th of May?

Mr. MOORE.—29th of May. The second time the witness was on the stand.

Miss BIRDSALL.—No. If you say so—I thought it was on the 14th.

(Testimony of Thomas W. Nealon.)

A. It was produced at a subsequent meeting after I had called for it.

The COURT.—I know, but it was mentioned by the bankrupt.

A. At the first meeting, yes.

The COURT.—At the first meeting.

A. And that was without any direct question to him upon the subject at all.

The COURT.—Instead of using the word "produced," I meant to say it was mentioned at the first meeting by the bankrupt.

A. Yes.

Mr. DYER.—That will be all. [420]

TESTIMONY OF GEORGE W. SHUTE, THE BANKRUPT.

(Witness in His Own Behalf.)

Direct Examination by Mr. MOORE.

I am George W. Shute, the bankrupt in this case; I was born in Tempe, Arizona; I grew up in Globe and vicinity, in Gila County. Until I was twenty-two I spent my early days on cattle ranches; when I was twenty-two a change came about in my career; I went to school and was finally admitted to the bar in 1902,—I believe it was,—along there; practiced from 1902 until 1906. I may be off a year or so on the years, but that is about right. Went to Northwestern in Chicago from 1906 or 1907 to 1908, and was there a year. Went back to Globe and went into the practice of law and practiced until 1909, when I assumed the duties of what was then the district attorney's office of that county and served

(Testimony of George W. Shute.)

there until 1912. Was elected to the Superior Court Bench about that time and served from then until the end of 1922, I believe it was. Since 1922, I have been engaged in the practice of law with Armstrong, Lewis & Kramer of this city, first as an employee, for the first year, and as a partner of the firm in the subsequent years. I am at this time a partner in the firm of Armstrong, Lewis & Kramer and actually engaged in my profession at Phoenix.

Mr. MOORE.—May it please the Court, we are skipping the first assignment here, in the hopes we may have Mr. England here to take it up in order. That is A under first.

Q. Judge Shute, I call your attention to the objections to your discharge in this matter, which has been filed by [421] the trustee and by the referee, and particularly to Paragraph B of the first specification, which is predicated upon the alleged concealing—alleged commission by you of an offense punishable by imprisonment under the Bankruptcy Act and that you knowingly and fraudulently concealed from the trustee one life insurance policy having a cash surrender value of $746.85. I will ask you whether or not, at your first examination at the first meeting of the creditors, on the 1st day of May, 1928, you did not voluntarily inform the trustee of the existence of that policy and at the same time stated that it had no loan value.

A. I did.

Q. And later on, was it discovered that the policy did have a loan value. A. Yes.

Q. When was that discovery made, Judge Shute? Well, in order to shorten this thing up, that was

(Testimony of George W. Shute.)

made at your second examination, which was on the 29th day of May, 1928?

A. I am not exactly clear as to just when it was, but it was when the policy was produced and tendered to Judge Nealon.

Q. Will you state the circumstances under which you obtained that insurance? Just relate your story to the Court, in order that he may judge of your good faith in making that statement.

A. Well, the policy was written by Grace Crockett—I believe it is Grace Crockett—I am not sure about her first name,—Miss Crockett, however, and was a policy which I had taken out for the purpose of protection only. At the time it was written and during subsequent years after it was written, I had discussed it with Miss Crockett on one or two occasions and probably more, in which I was always told [422] by Miss Crockett that there was no loan value to it, and that it ought to be changed and that it was lacking in certain other provisions of protection that she thought I ought to include in another policy.

Q. You are speaking now about the first policy?

A. About the first policy. I made no change in it until I came down here about the date that appears on this policy, which I don't remember, but in 1924—I will say along about that time—Miss Crockett came into the office on a friendly visit and again took up the question of changing the policy which she had originally written. She discussed two features or two features only that appealed to me. The first was that the premium under the old policy increased with age and told me that by the time I would need

(Testimony of George W. Shute.)

the insurance or the protection that it would come—that the premium would be so large that in all probability I could not meet it. The second referred to a double indemnity clause, which was worded in that—changed my idea about it, which provided for double indemnity in case of accident or other injury expressed or explained in the policy. We did not discuss the loan value at that time, and, later, Miss Crockett rewrote the policy and sent it to me and I put it in my box and, so far as I know, except for just looking at it when it came, I never again examined that policy or its terms. It lay in the box at the office from that time on down until I sent it or took it to Mr. Nealon. I don't believe it had even been out of the folder; if it had been I don't remember.

Q. Judge Shute, do you remember discussing that policy with Mr. Lewis, your attorney, at the time your schedule was prepared? A. Yes. [423]

Q. State what conversation occurred between you.

A. We talked about the policy. I told Mr. Lewis that I did have a policy but that it had no loan value and, having no loan value, would not be an asset. Did not take the trouvle to go into the safe and take it out, so thoroughly impressed was I that there was no loan value to it.

Q. Judge Shute, had you ever at any time read the policy?

A. I don't believe that I ever did. In fact I know I had never read it.

Q. What did you do when you found the policy really had a cash surrender value of $746.85?

A. Why I did the only thing that I could do;

(Testimony of George W. Shute.)

made arrangements to protect the policy and got the loan value of it and turned it over to the trustee.

Q. Well, the next specification under ground first is a commission of an offense punishable by imprisonment under the Bankruptcy Law, in that you concealed from your trustee a savings account in the National Bank of Arizona, in which there was a considerable sum of money, eleven hundred,— no, it must have been $3687.50.

A. I think that is the top amount, Mr. Moore.

Q. Just a minute. I will check it up. Yes, that —from which had been previously withdrawn the amount of the Creed and Noble notes, which will hereafter be mentioned. Will you state the circumstances and conditions under which that account was opened in Mrs. Shute's name,—the purpose and reason for it?

A. Yes. That will involve quite a story.

Q. Well, just take your time, Judge Shute, and tell it in your own way, fully and completely. [424]

A. During the time that I was on the bench in Gila County it was always sort of a losing thing. In other words, every year I found I was a little further behind, a little bit further behind, getting in a little deeper and using every dollar that I could and taking from Peter to pay Paul during the years, particularly after Virginia got to the point,— that is my daughter—got to the point where it became necessary to put her in an institution of training of some sort. In 1916, I think it was, some property was sold in Prescott that belonged to Mrs. Shute. The money that was received from that property, neither she nor I have been able to

(Testimony of George W. Shute.)

determine the exact amount. The best of our recollection is that the two pieces of property brought an aggregate of $4500.00, $3,000 for what we call the Gurley and Mt. Vernon property, and $1500.00 for what we call the Grandmother property, which is Mrs. Shute's grandmother. This money, when it came in, I used. For what purpose, I am not at this time clear. Probably used it in the payment of some of these demands—the pressing demands that were upon me at that time, but, in any event, Mrs. Shute never got anything out of it, with the result she was never very well satisfied with that condition and constantly referred to it as *as* instance of where I might have turned over money to her and she would have been able to have saved it. No opportunity arrived, however, that I can recall where there was an instance where we had anything that we might return to her or give to her this amount of money that had come in from this Prescott property until after I came with the firm of Armstrong, Lewis & Kramer. As soon as a situation developed whereby it became apparent that something could be saved, she insisted upon having the return of this money to her, so that she might have it. [425] There were many discussions about it. Much was said about it during these years and she finally started the savings account with money that she had received, probably from me and from other sources that came in to her, of a thousand or eleven hundred dollars.

Q. That is the beginning of the savings account?

A. That is the beginning of the savings account, and, to this savings account was added from time to

(Testimony of George W. Shute.)

time sums of money that I was able to put in or give to her to enable her to put in, including rent from the Globe property. That is the savings account and that is the story of the savings account.

Q. Now, as I understand it, about the 4th of January, there was in that account some $3,687.00 approximately—4th of January, 1928. That is before any withdrawal for Noble or Creed, is that correct?

A. Whatever the amount was, Mr. Moore. I would not attempt to say what the amount was.

Q. Now, Judge Shute, an arrangement was made by which you had the right to draw on that account by the production of a check-book, did you not?

A. Yes.

Q. I mean by the production of the bank-book. Will you state the purpose of that?

A. I don't believe the presentation of the bank-book was a condition of that right. In other words, I know that I did draw $50 or $100, whichever it was. Whatever, it will show that I did not have the bank-book. The reason for making it in the joint account was so that either of us could draw it out in the case of an emergency and for no other purpose. Mrs. Shute did not know of my drawing the first amount, whatever, it was, from the bank, [426] on account of my not having the book at that time for it to be put in. I drew out further another amount—a second drawing, I think, of the same amount to replace an overdraft at my own bank and that time she found it out and objected to it, of course.

(Testimony of George W. Shute.)

Q. Found it out when the balanced book was returned?

A. And told me that if I ever repeated the operation she would go right down to the bank and cancel entirely the right I had to check upon the savings account.

Q. Judge Shute, as I understand it, then you at various times deposited to this savings account portions of your earnings from different sources, and, with the exception of perhaps the rent from the Globe house, the money deposited in that savings account to Mrs. Shute was originally money earned by you.

A. No, not all of it. I think there was some of it that came in from little sales of certain personal property that you might—I think was community, —for instance the piano was sold. She sold a piano we had in Globe that we could not move and there were other little things like some blocks of stock,—two or three kinds in small amounts of a hundred, or hundred and fifty dollars or something like that but, exclusive of those amounts, the amounts that went into that savings account were as I tell you.

Q. What was your purpose in not listing in your schedule filed at the time of bankruptcy money in this savings account?

A. That is quite apparent. For the express purpose as I was returning her the money that came in from this Prescott property and of establishing an account exclusively for Mrs. Shute, to enable her to begin a savings that she had not been able to persuade me to do. [427]

(Testimony of George W. Shute.)

Q. Well, Judge Shute you do not answer my question. Why did you not list as among your assets this savings account?

A. It was Mrs. Shute's separate account—separate estate—separate money, and so regarded it.

Q. Did you consider you were repaying her on account of money that she had advanced you from the proceeds of the Prescott property?

A. Certainly. I told Judge Nealon about it at the time—went into it fully and explained it just as I have now, as near as I can remember, in detail, and to Miss Birdsall, who represents this creditor, as well. How there could have been any concealment of it is beyond me, because it was fully and completely discussed.

Q. Well, also in that connection,—I will take that up, because there is a charge in here that you failed to list a note of Joe Noble of $1235.00. Did you hear Mr. Noble testify on the stand this morning in regard to that particular transaction?

A. Yes.

Q. Tell the circumstances under which that transaction was made—all of the facts in connection with it.

A. Joe Noble had been a pupil at the Tempe Teachers College, then the State Normal School, where I first became acquainted with him, and where she was a teacher and he a pupil. She was quite interested in him even at that time. The friendship which began along about 1900 or 1901 kept on until—he visited our house frequently between 1901 and 1917; was always welcome and was thought much of in our household. In 1917 he was

(Testimony of George W. Shute.)

a captain of an infantry troup that was stationed at the Dam. He, during that time, in Globe, used to almost make our house his own house. [428] He would come there and stay and was perfectly at home there, and the very best of relation existed between us, and the very best of feeling existed between us. When this incident happened, Joe Noble came into the office one morning about the time that I arrived at the office in a very blue, despondent state of mind. He explained to me that he had gotten into some trouble and had to have $1200 and had to have it immediately. I talked to him about it quite a little bit and told him that I had no money; told him about the savings account of Mrs. Shute and told him that he might be able to talk her into it in the situation and to protest, whereby she would feel that she would not lose the money entirely. He asked me where Mrs. Shute was, and I told him she was uptown shopping, and that he would probably find her at Goldwater's, as she had told me she was going there for the purpose of purchasing some articles. He left the office, was gone some little time and came back with Mrs. Shute to the office. Mrs. Shute sat down and said that Joe had been talking to her and wanted to know what I thought about it. "Well, I think that is a matter entirely for your consideration." We talked to Joe about his ability to return the money and he told us that he would get a fellow by the name of Price, he thought, to sign the note, so that it would be payable directly to Mrs. Shute and that instead of getting the 4% which was hers upon the

(Testimony of George W. Shute.)

savings account that he would pay her 8% on the amount. I took the matter up with Kramer, and asked Kramer what he thought about it and Kramer immediately suggested that instead of Mrs. Shute letting the money come direct, that the bank lend it to Joe and secure this signature of Price and that in all [429] probability he would be much more apt to return it than if he had made the note directly to Mrs. Shute. The matter was subsequently taken up with Mr. Washburn, who corroborated that, and Mr. Washburn made the arrangement whereby there would be set apart from Mrs. Shute's savings account a sufficient amount of money to keep this note liquid. Joe said he would get Mr. Price to *t*ign this note,—I think that is the name—and that he would pay $50 a month on it. That sounded to me to be a better proposition than the one which I had talked over with him in the office, and that was finally done. I endorsed the note and a certain portion of Mrs. Shute's savings account was set aside in case it should not be paid to keep it liquid and the matter ran along, and Joe did not secure the signature of Price. Whether he could not or did not, I don't know, but he never paid the note, until finally Mr. Washburn told me that he thought it ought to be gotten out of the way; there was no need of fooling with it, as he expressed it, and that he would take it out of the savings account and deliver the note to me, which he did, and I, in turn, turned it over to Mrs. Shute. When this matter came up before the referee, I told Mr. Nealon and Miss Birdsall that the note was worthless; that I considered it worthless, and that I would deliver it

(Testimony of George W. Shute.)

to Mr. Nealon. I thought at that time that I had the note in my possession. When I went to look for it I found that I did not have it; that she had the note, and consequently, I delayed the delivering of the note to Mr. Nealon—did not deliver the note, and finally an order was made requiring me to deliver the note, and then I refused to deliver it, upon the ground that it belonged to Mrs. Shute.

Q. In this connection, there is also a specification against your discharge, alleging that you have concealed fraudulently a $1500.00 note executed by Leslie W. Creed and paid [430] from the savings account—money of which was not paid but the money advanced from the savings account. Will you explain that transaction?

A. Leslie Creed is my son-in-law. He is Virginia's husband. They live over at Gilbert. I had nothing whatever to do with that transaction, except to fix a note for Mrs. Shute so that they could sign it. Leslie, that is Mr. Creed, had in mind buying a little grocery store that lay out just beyond Gilbert. He could have bought the whole store, if he had wanted, for $1500.00. Leslie and Virginia went to Mrs. Shute and talked her into letting them have the $1500.00 for the purpose of purchasing that little grocery store. She finally let them have the money, took this note, bearing, I think, if I remember the terms of it rightly, 6% interest, and Leslie has paid the 6% interest upon the note and Mrs. Shute, in turn, has either turned it indirectly back to Virginia, or has put it in a little savings account of her little son.

(Testimony of George W. Shute.)

Q. What did they ultimately do with the money, Judge Shute?

A. They bought the half interest in the—I did not finish that deal. The purpose for which the money was borrowed involved a store that was owned by a fellow by the name of Leseur. Lesueur was to deliver Leslie a title to the goods and things of that sort, and Leslie, or Mr. Creed, asked me about it and I explained to him that there ought to be a notice given, so that if there was any creditors against the store they could make their objections to the transfer and Lesueur finally gave some sort of a notice but it was not enough and later got up and left the place entirely and there was an involuntary petition in bankruptcy filed against Lesueur and Leslie left it, upon my advice, and had nothing further to do with it, and did not complete [431] the transaction that he had had with Lesueur. He and his father later, hard on the heels of this transaction, purchased the Bayless store in Gilbert, Leslie, as I understand it, paying $1500 for half and Mr. Creed, his father, paying $1500.00 for an additional half, although that is just my understanding of it. I have never seen any papers or anything of that sort involving the transaction between Leslie and his father. They still are operating that store.

Q. State your reason, Judge Shute, for not listing the Noble note and the Creed note in your schedule as assets?

(Testimony of George W. Shute.)

A. For the same reason; that they did not belong to me; they were Mrs. Shute's separate estate and belonged to her.

Q. Now, the next paragraph, under specification first, alleges the knowing and fraudulent concealment from trustee of a certain contract entered into between him and Wesley Goswick on or about the 8th day of December, 1926, under the terms of which it was alleged you were to be paid $20,000 and have, in fact, been paid large sums of money. Will you be good enough to explain that transaction in detail, Judge Shute?

A. Yes. There never was such a contract, I hardly know how to begin.

Q. Well, begin at the very—that is true. Was there ever a contract between you and Wesley Goswick by which you were to receive 10% commission for the sale of this property?

A. Yes, there was.

Q. Now, start with that.

A. Will you give me the date? Can you give the date of that first option to Stalker and to Mr. Bedford?

Q. I don't know.

A. Well, I can begin a little bit before that. [432]

Q. That must have been in '24, Judge Shute—1925, some time.

A. Goswick is a man that I have been on the most intimate terms with ever since 1910 and knew him for a considerable period of time before 1910.

(Testimony of George W. Shute.)

I have grubstaked him. I have put up money for him to work. I have loaned him money. I have done everything for him that one friend could do for another. He located some cinnabar property—I think it was in 1924—on what is called Slate Creek in Gila County, consisting of what he calls the Ord Group of twenty claims. At the time he located these claims he asked me if I would not go in with him upon the claims and I told him that I was not able to bear the financial burden of it and would not handicap him in any way and would rather that I did not take any interest in the location of the claims or of putting up any money. He located the claims, as he tells me, in his own name, —discovered the claims in his own name and later, after some conversation which I had had with a fellow by the name of Bedford, who was chief engineer of Stalker, who represented some eastern people from Ohio, I think, he told me to try and dispose of these claims in a satisfactory manner to Mr. Stalker and his associated, through Mr. Bedford. Mr. Bedford lived at that time in Phoenix, and was living somewhere just east of Willetta,—he was living on Welletta Streets in Phoenix. He came to the house a time or two, talked about the property and told me that they had been operating a property on the opposite side of the mountain from this property, which was almost inaccessible, and that the expense, incidentally, of putting a road to it and of developing it was almost prohibitive.

(Testimony of George W. Shute.)

He told me that he thought much of what he had seen of these Goswick locations. The sum and substance of all this conversation [433] was that finally Bedford and myself entered into an agreement for the sale of these claims, under the terms of which agreement they were to be transferred to Stalker and his associated by an option to buy, giving as an ultimate payment $100,000.00, as I remember the option, and calling for an initial payment of $5,000.00 and, in addition to that, payments at periodic times during the life of the option. In addition to that, Bedford agreed, and it was inserted in the option, that certain work should be done promptly, a road running from the main highway up Tonto Creek to the claims, a distance of some six or seven miles. In the option was a paragraph which provided that in case it was not exercised for any purpose, all of the property which had been placed upon the property under the terms of the option should be forfeited and should accrue to the benefit of Goswick. It was finally done. It was finally entered into. Mr. Stalker came to see me and said that the agreement was all right and it was signed.

Q. Now, Judge Shute, prior to that time, had you had any agreement with Goswick as to your compensation in the event of a procuring of such a contract for him?

A. Yes, he told me that if I managed to put it across that he would pay me 10% of the payments

(Testimony of George W. Shute.)

that came in under the terms of the option as a commission upon the sale of the property.

Q. Well, proceed, now, and tell what the Stalker people did under that option.

A. The Stalker people entered upon these claims and the first thing they did was to begin the construction of this road. They constructed a road to the property at the expense of a considerable amount of money, the true amount of which I don't know, but may be somewhere between [434] twenty-five and thirty-five thousand dollars. The road was an exclusive road and was used only at that time for the purpose of reaching this property. In addition to that, they began the development of the claims, cross-cutting, sinking, stoping and doing those things that were necessary to be done to properly develop the bodies of ore. In addition to that, they erected a considerable number of cottages upon the property, the number of which I don't know, but must have been, one, two, three, four or five or six individual, including a warehouse, and began the installation of rather expensive machinery upon the property. In addition to that, they put on a considerable amount of materials, consisting of lumber, supplies of powder and an immense amount of personal property of different descriptions that I am not at all conversant with. The initial payment was made.

Q. How much, $5,000.00?

A. $5,000.00. I am not sure how an amount was paid to me or when it was paid; whether it was

(Testimony of George W. Shute.)

done then or whether it was extended over a period of time or just what happened. I don't know. He says that he paid me that initial payment. I assume that that is true.

Q. You are speaking of Goswick now?

A. Yes.

Q. Paying you 10%?

A. Yes. However, it ran along until October of that year and they moved off and left all of this personal property, except some dynamos that were taken off one night, which, as I roughly estimated it, amounted to approximately sixty to eighty thousand dollars. That ended my connection in every way with the property.

Q. What was the next you heard of it? [435]

A. The next I heard of it was when I went to Globe—I was in Globe one morning and Goswick came into the—well, of course I had heard rumors that they were attempting to handle the property but the first personal touch that I had with it after that time—when I was in Globe one day, Goswick came into the Clerk's office, where I was doing some work, and handed me a contract that he had made with L. E. Foster. He and I sat down and went over this contract paragraph by paragraph. I passed upon it and he said, "I wish you could meet Mr. Foster," and he took me over to what is known as the Globe Hotel and introduced me to Mr. L. E. Foster and I talked over the contract with him and his expectations and so on and congratulated him and the usual line of talk on such things. I don't

(Testimony of George W. Shute.)

believe that I was present at the signing of the contract. It does seem to me that I either wired Mr. Foster something relative to it or wrote Mr. Foster something relative to it, but in view of the fact that he says that he received no letters from me or communication, I am inclined to the belief that I must be in error about that but what it was about I don't know. That ended my connection with it entirely at that time.

Q. Now, Judge Shute, did you ever have any agreement or understanding, written or oral or otherwise, with Goswick or anyone else that you were to receive any compensation for services rendered Goswick in connection with the Foster sale or any part or portion of the price of that option?

A. Never. It was never even discussed.

Q. Now, it has developed that Goswick, subsequent to December 8, 1927, did give you money. Will you tell the circumstances, as near as you can remember, of each payment received from Goswick since that time. [436]

A. Yes, and Goswick stated that he had paid me 10% on this first payment. I am quite positive that he is in error in that. I don't believe that he paid me anything on this initial payment at all. Why he would, I don't know, and, if he did pay me anything, it has completely passed out of my mind, but that is liable to be the result.

Q. Let's see, Judge Shute. Pardon me just a moment, now. I have discussed this matter with Goswick since from time to time—if this refreshes

(Testimony of George W. Shute.)

your mind—do you remember Goswick offering you that money and you suggesting to him that he might never get any more and he had better keep it?

A. That is what impresses me now, because I remember that conversation very clearly with him.

Q. Suppose you state that conversation.

A. I do remember that he wanted to pay me out of this initial $5,000 payment, and, being conversant with these objections and knowing how hazardous they are, and how few of them have come to pass, I told him that he had better keep his money; that I had not done anything for it and that I would not charge him for the little thing that I had done for him, being simply looking over the contract. That is why I think he is in error.

Q. What, if any, reason did he give for desiring to give you $500 from that at that time?

A. Well, in the first place, he knew that I had examined this contract for him. He knew of the expenditures that had been made and of the many things that I have done for him in past years and, primarily, in his mind, was the benefit which he had received from the first contract which I had had with him, which resulted in his making the second deal.

Q. State whether that particular feature of it was mentioned. [437] A. Yes.

Q. What did he say about it?

Q. Well, he, I think, mentioned that if it had not been for the fact that I had done this work on the first option with Stalker and with Mr. Bedford

(Testimony of George W. Shute.)

that he could not have made the deal with Mr. Foster, the road that was in there, the personal property that was there and the houses, the facilities that were there, the supplies that were there, the work that had been done in the development of the property had all redounded to his benefit.

Q. Well, when was the next time that you received money from Goswick?

A. Not until, I think, some time in August of 1927.

Q. How much was that?

A. I don't know. I don't know to save my life. I can't tell you how much came in but it came in at one or two or three little intervals in amounts that I don't remember. In checking back over the bankbooks, it seems as though there was $295.00 came in at one time and $500.00 came in at another. Outside of that, I am not prepared to say how it came in and those came in a way that I would like to explain.

Q. All right. Go ahead.

A. Shortly after the sale to Foster, under the Foster option, some sort of a controversy arose between his son-in-law, Packard—Bill Packard, and himself. As I understand it, my first communication came from Packard himself, who told me he was an owner in that property and owned a half interest in it. He wrote me a letter to that effect and asked me if I would not see Goswick and try to get a deed from Goswick to a half interest in the property. Having [438] been perfectly familiar with these

(Testimony of George W. Shute.)

men all my life, I took Packard's statement for it for just what it was worth, drew a deed in which Goswick was to deed to Packard an undivided one-half interest in the mining claims and sent the deed to Goswick, with a letter stating to him that if it was agreeable to him and that was his understanding of it, that, in my opinion, Packard ought to have a deed to the property; to take it before a notary public and get it out of the way. He told me after that at the very first meeting I had with him that he did not sign the deed—he denied that Packard owned any part of the claims at all. He told me that he did have an arrangement with Packard, whereby he was to split the proceeds of the sale with him, in case a sale was made, for benefits which Packard had extended to him in the location of the claims and the furnishing of grub and so on upon the property. That must have been some time—I will put it roughly some time between the 1st of January and the 1st of June.

Q. *od* 19—

A. 1927. The dispute, after Goswick refused to deliver this deed, became somewhat strained. At least, the situation developed very rapidly to the extent where Packard deemed that it was necessary to do something to either realize from the claims or to get out. He and his wife came to see me. His wife came in the office first. This is Goswick's daughter, whom I have known for many, many years, and immediately launched into a story of the trouble that was taking place between her husband

(Testimony of George W. Shute.)

and her father, and told me that something ought to be done to eliminate it, because it was rather a strained relation. She cried a little bit and about that time Packard came into the room. They both sat down and told me that he had come down to try to [439] straighten up that business and wanted to sell me his interest in the claims. I explained to him that I could not buy it and explained to him that even if he did have an interest in the claims that it would not be right for me to buy in upon a dispute which had occurred between these two men, in view of my friendship for both of them, and told him it would be wholly and absolutely unfair to him because, if he sold before the option went through and it was finally exercised, that the amount that he would take from me under such a contract as he offered to me at that time would be wholly unfair to him and I turned it down. His wife said to him—turned to him said, "That is just what I told you that Judge Shute would say. I told you there was no use in coming down here to see about that." I talked to them at some length and assured both of them that if there was anything in the world I could do I would do it very gladly, in order to help them out of the situation. In the course of this discussion, which ran from that time on until in August of 1927,—just when it first cropped up, I don't know—but probably at the latter end of it he told me of a claim which another son-in-law had against the property of $50,000.00—told me that Jess Henderson was claiming $50,000 out of

(Testimony of George W. Shute.)

it, which was an amount over $150,000.00 that had been received from the property. I knew nothing at all about that understanding or that contract or that agreement or anything at all about it. It is entirely foreign to my mind. However, at this same time, Packard insisted that I was entitled to 10% of it, and had several times stated, "Had it not been for the fact that you had made this first deal with Goswick,—or Stalker, we would never have been able to have made the deal that we did make with Foster." [440]

Q. What did you say to Packard?

A. Well, I don't know what reply I might have made to that. The result of that was, after a considerable amount of negotiation—one of these payments was due on June 8, 1927. That was the $10,000 payment. I must necessarily depend somewhat on what Goswick tells me to make a complete connected story. Goswick tells me that on the 8th, when the first payment was due, he went to Globe and L. E. Foster gave him a personal check for $10,000.00. Goswick had married in December of 1926. Now I admit I might be off on that year, but anyhow Goswick had married and he and his wife, when they went to make this—to check up on this payment, this $10,000 payment, were on their way to California. The bank would not honor this personal check or would not credit to Goswick the $10,000 personal check until it had cleared. I think that he told me that they wired to ascertain if it was all right and the wire that came back was

(Testimony of George W. Shute.)

a little bit vague or something of that sort but at any rate he did not delay his trip to California. He came through Phoenix and stopped a short time and asked me if I would keep in touch with this situation and notify him at La Jolla if the check was all right. I did that. I think I telephoned up to the bank and asked them to let me know when the check cleared and they did it. I think I notified him at La Jolla. If I did not, I attempted to or did not get him there. I may be a little off as to whether he got my wire. It seems to me like he had moved from La Jolla and had gone to visit some relatives of his wife and they did not get the telegram. During all of this time in this interval, Packard was insisting on something being done and at one time wrote me that something had to be done about it; that he p*or*posed to have his half [441] interest in those claims. I think I advised him of Goswick's absence from Arizona, or he knew it. At any rate I requested Packard, either in person or by letter, to let me know when Goswick came back and I would try and make a settlement between these two contending forces. Some time about the 1st of August—along there—of that year, I received a letter from Packard, in which he told me that Goswick was back in Arizona and to try to fix it up for him. After that some time, I went to Payson to see both of them, Packard was there and Goswick was there. I am not sure whether the trip was especially for that purpose or not, but, at any rate, I was there, and I know I was there with the

(Testimony of George W. Shute.)

intention of doing what I could to settle the controversy. I saw Goswick and talked to him about it. He was very much worried, very much aggravated, very stubborn and very obstinate about it, but did tell me that it did not make any difference what I did about the situation; that anything I would do would be all right with him, except that he would not deed any part of the property to Goswick,—to Packard. I went to Packard's house and talked with him and his wife for a long time. At this conversation I think I told Packard, "Now, Bill, you know that so far as my relations with you and Wes are concerned, you can't hardly expect me to favor your viewpoint of it, in view of the fact that this is a contest between you and Wes, because you know that he and I have been friends that have been steadfast during all of these many years." He said to me then, "How about me? Haven't I been just as good a friend to you as he has? Don't I want to do as square a thing by you as he does?" I says, "That is not the question at all; that is entirely through, and I *don't you* to feel that I am at all imposing upon that friendship, or that I want to [442] sacrifice it or I want to lose it, but what I want to do is to try to arrive at some figure which will enable me to settle this between yourselves," and we talked it over—he was adamant for a long time upon the question of title. He wanted that title. That was his and he was going to have it. "That is the only thing I can't do for you, Bill. Can't you forget it? Can't you arrive

(Testimony of George W. Shute.)

at some sort of a money settlement here which will be satisfactory to both of you, so that both of you will be satisfied?" In the course of the conversation we talked about this $50,000 which he said that Jess Henderson was claiming as against the property, and he talked about what he said I was entitled to out of the property and rather stressed the fact that he would be only too glad to pay me out of the property at all times, with the result, as we neared a conclusion, that I said to him, "Now here, Packard, you are not interested in this Henderson claim at all?" "No, I am not." "You are not interested in anything that might be paid me out of it?" "No, I am not." "All right, now, if we eliminate those two items from the purchase price here and the balance should be divided equally between yourself and Goswick, would that be satisfactory." "No, it would not." His wife was there and she began to cry and told him that I was talking sense to him and that he had better listen to me; that there could not be any other conclusion reached, other than that would be a very fair thing, if it could be done. I am not so sure but what he and his wife went off and talked it over in the back room; I am not positive about that but it does seem to me that they did have a little talk about it, with the result that finally he says, "If he will agree to that, I will do it."

That was done, and that is the way the settlement was made [443] between him and Goswick. Now, the June payment had been made in to Gos-

(Testimony of George W. Shute.)

wick under the terms of the option in the bank but, as I understood it, between Packard and Goswick, no money had been divided at all, owing to the fact that these strained relations between the two of them—they would not talk to each other about it at all. After this deal was made I incorporated that into a notice to the bank, with a little agreement between the two of them that expressed our understanding of it and that concluded it. Now, the bank records—my deposits show that right at that time—immediately after that action that I received at one time $295.00 and another $500.00. The way those were paid, whether they are accurate or not, just what the amounts were, except for those deposits, I don't know. I do remember that at one time when Goswick and I were talking about this—the benefits they received under the Stalker option that he had paid me, he gave me $500.00, but whether it was the $500.00 at the time that this was written or that this agreement was made, or at another, I am not able to say. It does seem to me that they are the identical things and are based entirely upon that benefit. I think Packard had gave me a check for $495.00 for what he considered I was entitled to for that amount.

Q. Did those items, Judge Shute, go to make up, on your return in your income tax of 1927, as commission received from Goswick?

A. Those amounts, as I remember it, were the amounts that I put in to make up the acmounts that came from Goswick.

(Testimony of George W. Shute.)

Q. Do you remember the circumstance of your telling Mrs. Parry about that particular item to be included in your income tax? [444]

A. No, I do not. I know that Mrs. Parry would come in and say, "I am making out this tax. Have you got any other moneys that ought to go in here?" I would probably tell her just what it was and she would take it and work it out. I am a little bit ashamed of that $2,000 check for this reason; at the time that we had made this settlement—these things, of course, did not take place in quick succession, and in the order, probably, in which I have told them. They were a very lengthy thing and went through in a lecgthy series of steps. After this settlement was all made and the papers were all signed up and everything was done, I was talking with Goswick at their camp and he was elated. He told me at that time—he said, "I will tell you right now that you don't know how I appreciate getting this out of the way, not only for Rhoda's (?) sake, who was his daughter, but for the sake of the family as well. It has been nothing but hell around here ever since this thing came up, and I want you to know that I am certainly going to remember you, if this next payment comes in. I did not pay any particular attention to it, except that it registered with me just what he had in mind. I did not make any response to it or anything of the sort. The $2,000 payment, after I had gone back over it and talked to Goswick and checked it up and found out the ins and outs of it, the $2,000 came back to me

(Testimony of George W. Shute.)

or came to me. The record shows that on the day that it came in, I deposited it or one of the girls had been and deposited it, and I am inclined to think that the latter is true, and I kept a hundred dollars from it for some purpose or other and it went into my checking account and was dissipated in the natural course of my checking out. That is the $2,000 transaction. I am ashamed of it for this reason, when I was being examined about [445] that check,—I mean about the deposit of $1900, I could no more hook on to it than I could fly, and the thing, it seemed, had left my mind completely. Probably it was camouflaged by the fact it was $1900 instead of $2,000 and with the fact it was hugging in very closely with these other transactions which will probably come out here. I just simply could not account for it and turned mental gymnastics in attempting to make up that $1900 deposit from every conceivable source that I could think of to justify Judge Nealon and Miss Birdsall of just the source of that money. That is why I was—I should have said I can't remember and gone to my books and begun to find out where it was and have worked it out for them, which I did do later. I did receive other money from Goswick. That was June 8th, 1928; that was $8,000, and the circumstances under which that was given me were: I had been called to Globe by Goswick to check up on a number of royalties that had been running through the year, from the 1st of January or from the 8th of December of the previous year down to

(Testimony of George W. Shute.)

that time, which he could not get through his head. This contract provided for the payment of a certain royalty out of ores reduced and disposed of and the royalties were to come out of the payment on the property, plus an amount which they were paying him of $150.00. He could not get the idea, some way or other, just how I don't know, but he asked me if I would not come over and straighten it out there at the time that this other payment was due and I went over for that and the same day for that purpose went down to the bank with him and checked over the royalties, checked on the amounts and fixed it up for him until it was satisfactory. He says that I asked him for money. I don't remember that I asked him for money at all, but [446] I do know there was a running fire of talk and conversation and joking back and forth about the amounts until finally he invited me to come up to his room, where he and his wife were, over what is called the White House—lodging-house there and he gave me the $8,000 there, in currency. I have not received any further sums from Goswick, not a cent. I recall writing to Mrs. Holmes in Boston in November 17, 1927, that I was expecting to receive or have in $2,000 in December, from which I was to make some payment on the mortgage on my house.

Q. At that time did you have in mind the statement that Goswick made to you that when that $2,000.00 payment would come in he would certainly remember you?

(Testimony of George W. Shute.)

A. That is the exact reason for it.

Q. Judge Shute, do you recall, when you went back to see Goswick, after you talked with Packard, in which you outlined to Packard the plan to deduct $70,000 from the total of two hundred and divide the remainder between them, whether you told Goswick the manner in which you had arrived at that figure?

A. I think I did. I am quite sure I did.

Q. Did you, at any time subsequent to December 8, 1926, at the time this contract was executed between Goswick and Foster and his associated, have any agreement or understanding with Goswick that he was to pay you any money? A. No.

Q. State whether or not the payments that Goswick has made to you or the sums of money that he has given you were voluntary contributions by Goswick. A. Every one of them.

Q. Judge Shute, I neglected, when you were testifying to your savings account, to ask you how the property at Gurley, I [447] mean the property in Prescott, which you stated was your wife's came to her? A. How it came to her?

Q. Yes; you stated that she had property in Prescott which you sold.

A. She acquired that property,—well, that is property that she and her aunt, Mary D. Cullumber, and her grandmother, as I understand the story, had owned there from long prior to her marriage. Mrs. Shute's connection with it, as I understand it, up to a certain point, was that she and

(Testimony of George W. Shute.)

her aunt were keeping up the property and trying to keep it together and her aunt was using her money that she was making while teaching for that purpose. Mrs. Shute did not teach school for some time after our marriage; she did before.

Q. Well, what was done about the conveyance of it?

A. Well, the story about that is this: In 1910 or 11, Aunt was occupying the property in Prescott. All of that property stood in Mrs. Cullumber's name. *She taken* violently ill. Mrs. Shute was communicated with and she went up to take care of her and found her in a critical condition and the result of it was that she wired me that Aunt Mary, as we always called her, was not expected to live and to please come up and I went up. The property was deeded to me at that time. It was talked over. She was in a very critical condition and it was talked over and decided that the property should be deeded to Mrs. Shute. Mrs. Cullunder herself, I think, even before I had gotten there, or about the time I got there, got Charlie Herndon to make out the deed and, when it was ready to be signed and everything, it was discovered that the deed, instead of being made to Mrs. Shute, as it should have been, was made to me. [448] We did not attempt to change the deed or to have it redrafted but let it stand as it was, because it was all right between us and we had no desire or anything else to avoid it and the situation was critical, and that is the way the deed came to be made to

(Testimony of George W. Shute.)

me. It was left to stand that way and Aunt Mary died very shortly after that—probably a day or so after she had executed the deed.

Q. Were any of your earnings invested in that property?

A. Never a dollar that I know of after we were married until after Aunt Mary's death.

Q. Did Mrs. Shute own any interest in this property? Before the title was vested in her?

A. Mrs. Shute always owned a half interest in it.

Q. That she inherited?

A. It came down through her grandmother and through an understanding which she and Mrs. Cullumber had.

Q. Judge Shute the next assignment in opposition to your discharge, under the head of knowingly and fraudulently concealing property from the trustee, to wit, Lots 1, 2, 3, and 4 and the south half of 5 in Block 45 of East Globe, in which it is alleged that property passed to the trustee under operation of law and that it should be a part of the estate and that you did not list it; will you state the circumstances surrounding that property? What is the state of the title? A. At this time?

Q. Yes, go into the history of it, acquiring of it and start at the first of it.

A. At the time that I went to Northwestern, we had owned a little house.

Q. That was in what year now? [449]

A. That was in 1906, I think. I may be a year

(Testimony of George W. Shute.)

off, but that is approximately correct, I think. When I went to Northwestern we had owned a little house at the corner of Devereaux and Maple Street, which I will call the Maple Street property. Mrs. Shute went to Northwestern or went to Chicago with me. She was not going to Northwestern, but she went to Chicago with me and, when we left, we had leased this Maple Street property to a renter for a full year. I did not quite complete my year at Northwestern. An illness of hers and other things forced me out just before I completed the first year at Northwestern and forced us back to Globe some four or five or six months—something like that—four or five months anyway, before the expiration date of this renter's lease on the property, which has been leased for a year. That necessitated our finding other places to live and we went to live with—got a room with a woman by the name of Mason. We lived there some little time. When I came back from Northwestern, I owed quite a little bit of money. Her illness and other things had necessitated an expenditure that I could not stand. I had only figured, of course, on just about enough to take me through the year at Northwestern and I sold the Globe property—this Maple Street property, without asking Mrs. Shute anything at all about it. This was in 1907, I think. The deeds or whatever they were, we made will show that the date to a certainty, and took the deed to Mrs. Shute to sign, without telling her that I had made the sale or without making any explanation of it.

(Testimony of George W. Shute.)

She had grown very tired of living, as she had lived, in this room in this house that I am telling you about, and when I presented the deed to her and she saw that the place that she expected soon to live in was gone, she flew into a rage and tore the deed up and refused to sign it. Later she apologized for it and told [450] me she was sorry that she had been so nasty about it and would sign a deed, if I would draw it up, but she was going to Prescott and was going to remain in Prescott until she had a home to live in, and that she wanted it understood from that time on that the home would always be hers, so that I could not repeat the process of selling it over her head without consulting her about it before I had committed myself to that sort of a proceeding. That was perfectly all right with me, except the going to Prescott. I prepared the deed, she signed it and the property was deeded, and Mrs. Shute left for Prescott. After she was gone, I tried to get another place and finally bought a place on Devereaux, that I will call the Devereaux Street property, which was purchased, I think, in 1907 or 1908, from John H. Moorehead. I notified Mrs. Shute and she came down, and for a time we went into possession of the property and, in accordance with the understanding which I had with her, I deeded the property to her immediately after her coming to Globe—probably only a week or ten days after she returned to Globe. I deeded this Devereaux Street property to Mrs. Shute and we continued to live in that Devereaux Street property

(Testimony of George W. Shute.)

from that time until 1920. In 1920 she became dissatisfied with living there, and, eliminating much of the little steps that amount to nothing, became interested in the property that is the subject of this controversy at the corner of First and Sycamore Streets, and we bought the property at the corner of First and Sycamore Streets. The property was originally purchased from a fellow by the name of Sanders, and was deeded directly to Mrs. Shute and the deed stood in her name and has stood in her name from that time on down. [451]

I sold the Devereaux Street property. I was just about to speak of that. The transaction, as I remember it, was somewhat complicated, with Sanders, with John Griffin, with Hoyt Medlar and the effort that was made was to include this Devereaux Street property in the Cottonwood property, which was finally done, with the result that $3,000.00 was credited upon the purchase to Sanders by Griffin to the bank upon the purchase of the Cottonwood property, through the medium of the Devereaux Street property. Do I make myself clear? The Devereaux Street property actually went in as a part of the purchase price of this property involved here and became a part of it. The remaining part of the purchase price was borrowed from Mrs. Holmes, $3000, and was paid by myself, that is, most of it paid. My reason for omitting that property is that it is Mrs. Shute's separate property and has been always. I certainly did disclose the condition of that property to my trustee at my first ex-

(Testimony of George W. Shute.)

amination. I have withheld possession [452] of that property from the trustee. The trustee has not taken any steps to reduce it to possession, although he has been frequently requested to take some steps, because he served a notice upon the renter that was there not to pay the rent, which resulted in rather an aggravated condition, but he has not, down to this minute, taken any step to reduce it, if he can do it. Mrs. Shute has been subpoenaed as a witness one time in these bankruptcy proceedings in regard to the property that she claims to own, but so far as I know that is all. Mrs. Shute has employed her own counsel in the case in regard to the bank account and the property at Globe. Right immediately after this first meeting, when I saw that they were going to question her right to the Globe property, and to other property that I knew belonged to her, I told her that she had better have separate counsel in the matter, so that she could protect herself in the same of any claims that might be made. She asked me who I thought would be good counsel for her. I told her that I thought that Clifton Matthews was probably without a peer in Arizona, and that I knew that he would take care of it for her and take care of it properly. She asked me if I would see Clifton Matthews for her when I was in Globe some time, and I did. I saw him and asked him if he would represent her and he said that he would be very glad to do what he could for her and called her up on the telephone and talked to her over the telephone about it. Later, she went up herself and saw

(Testimony of George W. Shute.)

him and laid the matter before him, as I understand it, as fully as she could. In that conversation with Clifton Matthews I disclosed to him the facts in connection with the savings account and the residence property as I have testified here before the court. Mr. Matthews' advice as to the state of the title of the personal as well as the real estate, was that there was no doubt but what it was her separate estate. Some of the income from this property has been applied to the payment of interest on the Holmes [453] mortgage. Referring to the next assignment, which is fraudulently withholding from the trustee and fraudulently omitting from my schedule —has to do with one Essex car described as serial number 640003 of the value of $600.00 which it is alleged I failed to list and that I fraudulently and knowingly concealed from the trustee, I will say that during all of the time since I have been engaged in the practice of law with Armstrong, Lewis & Kramer, my work has called me to various parts of the state, where I have been engaged in the litigation of different cases and, in going to these different places I used the automobile that I had when I came down from Globe. The result of this was that I left Mrs. Shute without any method or means of conveyance at all or with no way of getting about to any place that she might want to go. This was particularly true after Virginia's marriage, when she had moved over to Gilbert, when Mrs. Shute desired to visit her, which she has done very frequently. The need of some method of conveyance

(Testimony of George W. Shute.)

was very keenly felt, with the result that at Christmas-time, 1925, I purchased from J. A. Pinon (?) in Globe a little Essex car, upon a conditional sales contract, and gave it to Mrs. Shute at Christmas-time of that year. This little car was retained and kept until in August, 1927, when the new issue of Essex came out, when she turned it in to get as high a trade in value as she could on it at the time of the coming out of the new series and got a certain amount on it that I don't remember exactly, the rest of which I paid out myself for her. That is the car in question, which was delivered to her in August of 1927.

The title to both of the cars, both of the original one and the subsequent one was taken in Mrs. Shute's name and license issued to her. I also discussed the Essex car with Clifton Matthews and described the situation as I have here; he told me that it was undoubtedly a separate estate. I think in my discussion with Matthews I told him of my financial condition prior to giving this [454] first car to Mrs. Shute. I went into it just as far as I could with him and that particular point was discussed. I told him just what the facts were, and he went over them and we considered whether or not the car was hers and he said without any doubt the car anyway was hers, subject to any action that the trustee might take against it; that he might set it aside. He was not prepared to say at that time whether or not the trustee could set it aside, but, until he did set it aside, that is, between Mrs. Shute

(Testimony of George W. Shute.)

and myself; that until the trustee did take some affirmative action, without any doubt in the world, the car was hers.

Regarding the next specification under the first paragraph, of knowingly and fraudulently concealing property from the trustee, involving the sum of $995.00, which is alleged to be an amount which I paid in the month of December, 1927, to A. E. England by check on the First National Bank on the Wentworth car, I made an arrangement with England, whereby the Wentworths bought a car. England is a client of mine. They came down, selected the car and paid four or five hundred dollars on it. The exact amount, I don't know. I think it is $400.00. By means of a cashier's check. After that time, between that and the selling of the little car that was turned in on the transaction—not turned in but left there for sale, they gave me the amount of money necessary to complete the payment of this car, which I did. That is all there is to the transaction. The first $400 was, I think, probably turned over to England by Miss Wentworth herself. The rest of it came along in different amounts at different times until the full purchase price of the car was paid out. That $400 was not a part of the $995. This $995 was money that was given to me by Miss Wentworth, who lives at Globe, to apply on this contract. I never had any right, title or interest in the Wentworth car and this $995.00. The whole situation was explained to the trustee and to the creditor, I think, at the first

(Testimony of George W. Shute.)

meeting by [455] myself, as well as by the A. E. England Motor people. At the time I filed my petition in bankruptcy, Miss Wentworth did not owe me anything, and I paid none of my earnings into the purchase price of that car.

Referring to paragraph H under the same general assignment of concealing property, involving the La Prade transaction, why not let it go just as Mr. La Prade said it was because that is just the way it happened. After the check came in I took it up with Mr. Nealon and turned the check over to him, and that was all there was to it. Long prior to the time I filed my petition in bankruptcy, the knowledge had come to me that Cornelius was a slicker and had cheated all of us.

The phonograph is in the same status exactly as the little Essex car. It was given to Mrs. Shute as a Christmas present a year ago last December—December, 1927. The payments on that had not been completed entirely at the time of my bankruptcy. I think there was $50.00 or something like that due on it. That was bought just on open account and I paid the amount out as a sort of monthly payment thing.

Taking up the third assignment, which is objection to my discharge for the reason that I committed an offense punishable by imprisonment under the Bankruptcy Act in that in the course of proceedings in bankruptcy when examined before the referee at the first meeting of creditors, after being duly sworn I knowingly and fraudulently made a

(Testimony of George W. Shute.)

false oath in answering the following question propounded to me under examination: "Q. (Referring to Hudson car owned by said bankrupt at the time of the filing of the petition:) You have made no payments except the work you have done for him? A. That is about the way it would figure out; I don't think I made any cash payments at all." The record appears that way. However, in making that statement what I had in mind was what the subject of this controversy always was, namely, the throwing-off [456] between the dealer's price and the buyer's price.

The fifth assignment is making a false oath in reference to the following question propounded to me under examination at the first meeting of creditors: "Q. Since that time (January, 1924) how much have you received from the firm's business (referring to the firm of Armstrong, Lewis & Kramer). A. Well, I can only give an approximation, but I think it is pretty close. I think the first year I received about $5500; that was in 1924; in 1925, I received between $5500 and $6,000; I think in 1926 it was about $8,000; I think the last year I received somewhere in the neighborhood of $10,000; that is about right, I think." It is alleged that my answer to that question was false as to a material fact and that I received $15,250.00 in 1927, instead of ten. When I stated that I was testifying entirely from recollection. That was my recollection. I knew that the books of Armstrong, Lewis & Kramer were carefully kept by a competent book-

(Testimony of George W. Shute.)

keeper and would show every penny of the money that I had received and, answering it approximately, I answered what I thought was right. Immediately after I made that answer I was asked the question "You have no books available?" and I answered, "The firm books show my earnings." A short time after that examination I furnished the trustee with a statement taken from the books of Armstrong, Lewis & Kramer which showed my earnings during the period in regard to which I testified. That statement that I furnished showed my earnings from the firm during 1924 were $5,-987.50.

Regarding the sixth assignment, which is that I made a false oath in answering the following question: "How much have you drawn from the firm (being the firm of Armstrong, Lewis & Kramer) since the first of the year?" And I answered, "I think about $500 a month. There has been no dividend in April." I do remember testifying that there was no dividend in April. My [457] recollection of it is that I was being examined at considerable length upon the reason of the borrowing of the $750 from the bank. I testified, and it was in my mind that the material thing was—the reason for the borrowing of this money from the bank, and the reason for it was that there had been no dividend in April, meaning by that there had been no dividend paid in April up until the time that I got this money from the bank, showing a reason for the borrowing of the money, and not for the

(Testimony of George W. Shute.)

purpose of attempting to evade anything in the world that the trustee may have wanted and, had he asked me about it, the same answer would necessarily have been given; that the firm books would show every penny of my income from the firm,—every penny of it.

Judge Nealon and Miss Birdsall both knew that that was what the situation was because it was particularly discussed at these meetings. I can't remember whether there was a discussion between myself and Mr. Lewis and Judge Nealon and Miss Birdsall at the first meeting of creditors on May 1st about furnishing records which was not reported in the proceedings. I don't remember about it, but I do know there was always a lot of discussion about it and always offers upon my part to co-operate with Judge Nealon in any way possible to help him arrive at an absolute certainty as to what the condition was. I was always testifying from memory. I had not examined my memorandum at the office or books before testifying, so as to refresh my mind as to exactly when the dividend had been paid. I had no idea before I took the stand that I was going to be asked when the dividend was paid. The statement that I furnished the trustee a few days after my first examination discloses that on the 10th day of April, 1928, I had in fact received a dividend of $775.00.

Referring to the seventh assignment, that I made a false oath in answering the following question: "In addition to that (referring to receipts from the

(Testimony of George W. Shute.)

firm of Armstrong, Lewis [458] & Kramer) then, there should be other amounts that you have received in order to make the books complete?" To which I answered, "That depends on the way you look at it. You will remember that I told you about the little block of stock we sold after we came down here. There was also a little Mrs. Shute owned in the Iron Blossom, I think it was called; there was 100 shares of that. We sold that and I used the money. There may be two or three small instances like that, but except in very small items of that kind, the income was from the firm." I don't think that prior to being placed on the stand at the examination which was on the 29th day of May, 1927, I had been advised that I would be called upon to give a detailed statement of earnings received by me from sources other than the firm. At the time I made that statement I did not know it was false. I certainly did not make it for the purpose of defrauding anyone. My present recollection is that this question and answer was propounded on May 29th and that prior to that time I had furnished the trustee with a statement with my receipts from Armstrong, Lewis & Kramer, together with bank statements and canceled checks covering the time. That was the meeting at which they took up the checks and statements and examined about it. As to it being a fact that the bank statement that I furnished at that time would show large deposits and large receipts that were not shown on the statement furnished by Armstrong,

(Testimony of George W. Shute.)

Lewis & Kramer as the earnings from the firm, I am quite sure—I know that I told Orme Lewis and it seems to me that I told Mr. Nealon that everything—every business transaction that I had had of every nature had run through the First National Bank and that this—my deposit slips, my checks and bank statements would have a key and an index to everything that I had done from the time that I opened my bank account with the First National Bank down to that minute. There was a key, in there, I think, to every single transaction, without exception. All of that information was in [459] the hands of the trustee at the time I answered that question.

Referring to the eighth assignment, which was predicated on alleged false swearing in my answer to the following question propounded to me at the creditors' meeting on the 29th of May: "Q. During all of this period, did you receive any large sums of money from other sources other than those that you have testified to? A. I think I have testified to all of them, either at this hearing or the other one." The answer I have given in regard to the preceding assignment, No. 7, applies exactly the same way to this one. I probably should have answered that a little different but, having in mind the fact of the overtures,—offers that I had made to get these checks and stubs and things of that sort, which constituted the only record I had of all these different business transactions and the key to them, I an-

(Testimony of George W. Shute.)

swered it because of that thing. All of it had been delivered to Mr. Nealon at that time.

Referring to the ninth assignment, in which it is alleged that I gave a false oath in answering the following series of questions propounded to me at the first examination on May 29th: "Q. You have no interest in any mining property? A. None at all. Q. Any mining claims? A. No. Q. Have you represented any companies over there in any way as counsel from whom you have received fees since being in Phoenix? A. I cannot think of any. It would be on the books here if I have. Q. You have received nothing that would not show on the books of Armstrong, Lewis & Kramer? A. I don't think so. Q. From Globe companies or from interests you have there? A. I don't think so." Stating what I have to say in regard to any fees that I had received from companies in Globe, if I answered it now I think I would answer it the same way I did then. That is that all fees that I received from any companies at Globe or any other place pass through the books of Armstrong, Lewis & Kramer. It is alleged that my answer [460] to that was false in that I received $20,000, the money that I received from Wesley Goswick, which had not been taken into account and was not showing on the books of Armstrong, Lewis & Kramer and constituting this series of questions and answers as perjury. I have already testified that the money I received from Goswick was by the way of a

(Testimony of George W. Shute.)

gratuity. I testified as fully to it, I think as can. My answer this time would be the same.

The tenth assignment, which is predicated on an alleged false oath made by me in testifying before the Referee on May 29th, as follows: "Q. When was this $500.00 payment received from Mr. Goswick? A. In December, 1927. Q. Have you ever received any other amounts from him? A. Only for fees; they would go into the firm. Q. This $500 was not fees? A. No. Q. Have you any interest in these options of Goswick's? A. No. Q. You do not expect to receive any other amounts from him other than this $500? A. No. Q. If he should send you any more money, you would be surprised, would you? A. I most certainly would." That is alleged to be false, in that I have received from Goswick, during the month of December, 1927, the payment of $2,000, which was in addition to the $500. I would only say that is $2000 that I have just related. I can't add to it or take anything away from it. That is just the situation. That $2000 had completely escaped my mind. I did not even return it on my income tax, for some unknown reason.

Regarding the eleventh assignment, which is that I have made a false oath and rendered a false account in relation to my proceedings in bankruptcy because on the 17th day of April, 1928, in my schedule subscribed and sworn to before Mrs. Conger, a notary public, I failed to schedule my indebtedness to the First National Bank in the sum of $750.00. That matter was discussed and I knew

(Testimony of George W. Shute.)

that there was going to be no claim filed on behalf of the First National Bank and it was in my mind that it was not [461] necessary; that no part of it was going to be paid out of this estate and it was not listed for that reason. I always thought that, in view of that fact, that any result of it would redound to the benefit of this creditor and that it would not be necessary at all.

(Examination by Mr. LEWIS.)

I do not think I discussed the matter of listing it with anyone besides yourself. I discussed of course the whole matter with Mr. Armstrong on two or three occasions, but I don't believe that I discussed the question of listing with him at all. In fact, I did not bother him with any of the matters after the proceedings started. In the eleventh assignment it states that the amount of $650.00 which was the consideration of the note in question, was not satisfactorily accounted for. I think that that fully appears upon the statement. I did not understand that it had not been accounted for. As I explained at the time, the money was borrowed primarily for the purpose of paying up the current bills, so that there would be none of those back, and that took a certain amount of it and I paid other little amounts that I do not have clearly in mind at this time just what it was.

Regarding Assignment 11–B, which states that I made a false oath as to my liability in the estate in that after being sworn I made a statement of all my assets, both real and personal; that the only assets scheduled were real estate of the value of $250; books, prints and pictures, $25.00; deposits

(Testimony of George W. Shute.)

of money in the bank and elsewhere, $15.67; certain mining stock listed of no value, making a total of nonexempt assets of $290.67; exempt property, household goods, $250.00 and other personal property, consisting of a law library and office fixtures of the value of $750.00, when in truth, my assets at that time were in excess of $30,000.00, being one Hudson car, motor No. 495579; life [462] insurance policy with a cash surrender value of $746.85; savings account No. 19061, in the First National Bank, in the name of Jessie M. Shute; one phonograph of the value of $200.00; the sum of $250 deposited by the bankrupt with Arthur La Prade; one Essex car, No. 640003, of the value of $600.00; lots 1, 2, 3, and 4 and the south half of 5, in Block 45 East Globe townsite, of the value of $5,000.00, and the Goswick contract that has been mentioned before; and undivided interest in the assets of the firm of Armstrong, Lewis & Kramer, of the estimated value of $5,000. With regard to the life insurance policy, I testified to that fully and cannot add anything to it. The same applies to the savings account of Jessie M. Shute. I have also testified as to the value of the phonograph of $200.00 and the $250.00 deposited by me with Arthur La Prade. I have also testified as to the Essex car valued at $600.00 and have covered in my testimony the Globe property and the alleged contract with Wesley Goswick. As to omitting to schedule the undivided partnership interest in the assets of the firm of Armstrong, Lewis & Kramer in my first schedule, it was omitted in the first schedule because of a peculiar sort of a mix-up there was over the

(Testimony of George W. Shute.)

contracts and with no idea in the world of avoiding or attempting to avoid anything that really belonged to the trustee under the partnership accounts. That is the only reason for it. The trouble arose over an interpretation of the contract that there was quite a little bit of difficulty within the firm until the matter was finally settled as to just what the contract meant, which occurred along about or right at this time. Mr. Moore and I occupied a different relation toward the firm than the other members—than the other three members of the firm. I just know that I had that impression. I probably could read over those contracts and go back down through the different partnership agreements and specify exactly what the situation was. My recollection of it is that [463] when I came into the firm, of course, it was an old, established, going concern, with thousands of dollars on the books of the company, that I had had no part in whatever in earning or accumulating, both old and new accounts that were being run and, when I came in, they were generous enough to me to put me right in with those old accounts, just as though I had earned them, and attempted to provide for it in a way by providing in the contract that upon a dissolution of the partnership agreements that I would leave without participating in any of the earnings that I had accumulated during that time or had made during that time.

(Examination by Mr. MOORE.)

Referring back to my failure to list the note that I owed the First National Bank of Arizona, I have

(Testimony of George W. Shute.)

had practically no experience in the practice of bankruptcy law. As a matter of fact, up until the filing of my schedule, my entire practice in bankruptcy consisted in filing one schedule that had already been prepared by someone else. I was under the impression that under the law I was not required to list or schedule every debt I owed, especially this particular one. Mr. Lewis and I had discussed it a little bit. I knew there was going to be no claim filed and I just put two and two together and thought, "Well, there is no use in putting in a claim that is not going to be filed, because it amounts to no claim against the estate at all and whatever may result from it would be to the benefit of the creditor," and just let it go for that reason. Referring to paragraph 10 of the agreement of partnership of Armstrong, Lewis & Kramer, which is dated the 1st day of January, 1924, in evidence as Creditor's Exhibit No. 22, "The new firm will assume and pay all the obligations of the old firm. All earnings of the old firm of Armstrong, Lewis & Kramer collected or received after January 1, 1924, shall be regarded as earnings of the new firm and treated and distributed accordingly. In view of this provision and of the fact that [464] neither the said James R. Moore nor G. W. Shute have contributed to such earnings uncollected at said last mentioned date, then on dissolution of this new firm by the expiration of this agreement or by the withdrawal, disability or death of either said Moore or said Shute, neither said Moore nor said Shute, nor his heirs, executors or administrators shall be entitled to participate in the distribution or

(Testimony of George W. Shute.)

division of any firm earnings thereafter collected for services theretofore or thereafter rendered." I had that provision in the contract in mind which led me to believe that on the dissolution of the firm by Judge Lewis' death, I had no further interest in the earnings of the firm. That proposition had been discussed quite a bit between yourself and myself and there was quite a little bit of fear expressed that neither of us were entitled to any moneys that had been earned but not actually collected at Judge Lewis' death. As a matter of fact, Mr. Armstrong and Mr. Kramer waived any question about that provision. I have not testified fully about the specification which refers to my failure to list on my amended schedule the Hudson car of the value of $900.00. I have testified about the life insurance policy, the savings account, the phonograph, $250.00 from Arthur La Prade, the Essex car, the house at Globe and the Goswick contract. Referring to the next specification, No. 12, which is that after filing the petition in bankruptcy I knowingly and fraudulently withheld from the trustee documents and papers affecting and relating to my property and affairs to the possession of which the trustee is entitled, and possession of which is necessary to the trustee for the purpose of collecting in the assets of the bankrupt, said documents and papers, consisting of lease on house in which I live claimed to be of the value of $75.00, that lease was also not listed. That was the yearly lease, where I paid from month to month on the property where I live. It was not withheld. At the time I listed

(Testimony of George W. Shute.)

my assets, I never thought of that [465] lease at all. It is one of the things that never occurred to me was of any value or could be of any possible use to anyone else, and that was the reason that it was not listed and that is the reason why I did not think of it. I didn't know anything about it. Never occurred to me, until we got into the examination, what that was. It was not withheld from Judge Nealon or the creditor but on one or two occasions I demanded to know whether or not he wanted the lease; if he did, I would move out and surrender the property and give it to him. The question that was involved consisted in my right to live in the house during the last month of the term without paying any money and also the payment of the rent in the month immediately preceding the filing of the petition. I had paid the rent in advance. The lease provided for a monthly payment in advance and required that the first month and the last month of the lease be paid. The trustee did not ask me to move out in order that he might find a new tenant and collect the rent. The trustee would neither say that he wanted the lease or he would not but he said that he wanted the money that I had paid on the lease immediately preceding the filing of the adjudication and wanted the money that I had paid on the last month of the lease. I think at one time I told him I was not going to quarrel over a $75.00 item, if that was all there was to it—that amounted to so little that I would not quarrel with him over a $75.00 item, which was the last month of the lease but I did not pay him. The controversy over that is still pending before the referee on an order to

(Testimony of George W. Shute.)

show cause why I should not pay $150.00. I have testified in regard to my failure to surrender the Noble note. I believe that is pending before the referee. Referring to the thirteenth assignment, which is my failure to keep books of account or records from which my financial condition and business transactions might be ascertained, and that I have concealed records from which my business transactions might be [466] ascertained, I certainly have not concealed any records whatsoever from the trustee, and I have always told Mr. Nealon anything I could get for him I would get, so he might have it. I cannot remember of Mr. Nealon or anyone representing a creditor ever asking for any of my records, that I have failed to produce that were in existence. I have not destroyed any of my records. I have furnished him fully and completely all records that I have of my business. I did not keep any books other than my bank records. I kept no regular set of books. When I would get money, I would deposit it or deposit part of it and keep part of it and the checks that I have would express the amounts that had been drawn out and show the amounts that had been drawn out and the bank deposits would show the amounts that had been paid in. It was sufficient for my needs after the business in which I was engaged was taken care of. The practice of law is my only business, and the firm of Armstrong, Lewis & Kramer, of which I am a member, keep full and complete records.

Referring to the next specification, which is 14, where it is alleged that subsequent to the twelve months immediately preceding the filing of my peti-

(Testimony of George W. Shute.)

tion in bankruptcy, I transferred real property owned by me from me to my wife with intent to hinder, delay and defraud my creditors, I don't know what could be meant by that. I have not in the twelve months before I entered bankruptcy executed any deed or transferred or made a gift affecting real property to my wife. I did not within twelve months of bankruptcy transfer the property known as the Globe residence to Mrs. Shute. I never did transfer it to Mrs. Shute. It was deeded directly to her by Mr. Sanders, as I testified yesterday. If the deed is in evidence, that will show it.

The COURT.—Well, that is not the specification. The specification is that while insolvent and within the meaning and intent of the Bankruptcy Act and not having sufficient property to pay his debts [467] he transferred the above property, by disclaiming any interest therein, in her favor and by relinquishing possession thereof. That is the reading of the specification.

I have never had an interest in that property to disclaim other than what I told on my examination before the referee that I considered it Mrs. Shute's separate property. I have not relinquished possession of that property to her. I have not withheld possession of that property from the trustee. As I said yesterday, that property has always been Mrs. Shute's—always—from the time it was purchased down to the present time. It has been rented constantly at $50 a month and some of that money has been turned over to Mrs. Shute. Some of it I used myself. Some of it was paid on the mortgage to

(Testimony of George W. Shute.)

Mrs. Holmes. I have not assisted Mrs. Shute in withholding possession of this property from the trustee that I know of. I do not consider that advising her or assisting her is withholding it. I have testified to the sixteenth assignment, which is the savings account in the National Bank of Arizona. Referring to the seventeenth assignment, which is $8000.00 received from Wesley Goswick, they have never made demand upon me for that amount that I received from Goswick. I did not conceal it. Referring to the eighteenth specification, which is that I have failed to comply with a lawful order made during the course of bankruptcy directing me to file an amended schedule in accordance with the law, in that I omitted from the schedule the Hudson car, the life insurance policy, the savings account, the phonograph and La Prade $250.00 and the Essex car and the home at Globe and the Goswick contract. I don't think I was ever served with a copy of an order to include these items in the amended schedule. I think that the only thing that was ever done was while we were there before the referee and talking over the matter. I think I have testified fully as to my reasons for not including the items mentioned in my amended schedule except the [468] Hudson car. Referring to the nineteenth assignment, which is that I failed to explain satisfactorily losses of assets and deficiency of assets to meet my liabilities in that for the period commencing January 1, 1927, up to and including the date of the filing of my petition on the 17th day of April, I had cash assets in the form of income amounting to not less than $21,000.00, and that

(Testimony of George W. Shute.)

I failed to account for $7000.00 of that money, I have accounted for all money received and what was done with it to the best of my ability. I did not have in my possession at the time of my bankruptcy any property or assets that I did not list except those that have been enumerated in there, the disputed items, plus that property which I listed, constituted my entire estate at the time of the bankruptcy.

Mr. MOORE.—Q. Judge Shute, the first ground of opposition to your discharge is that you fraudulently concealed from the trustee a Hudson sedan, being Serial No. 799342, and that automobile transaction is found at various points throughout the specifications.

The COURT.—Let the answer relate to all of the specifications with reference to the Hudson car.

Mr. MOORE.—That is exactly what I was leading up to. [469]

Q. Now, will you tell the history of your automobile transactions with the England Motor Company from the beginning right on down to your bankruptcy and subsequent, in order that the Court may have a full story?

A. I cannot remember the numbers—the serial numbers or the motor numbers of the cars and will not attempt to. I cannot remember any of the dates that these things happened and, if they become material, I think they can be established by the different records in the case. The first transaction that I had with England consisted of a purchase from England of what is called the Downey

(Testimony of George W. Shute.)

(?) car, in which England transferred to me a contract from a man by the name of Downey, in Miami, who had failed to make his payments and who had turned the car back or it had been reclaimed by the England Motors, Incorporated. At the time of the purchase of this car, there was back on the contract $190.00 and some cents. England told me that I could take up the contract and go on paying the C. I. T. Corporation as Downey *sgoyld* have done. I did not pay the $190.00 but did continue with the payments under the Downey car. I think they are to the C. I. T. Corporation but I am not clear exactly on that, whether it was paid to England and then paid to the C. I. T. or whether I paid it direct, but I believe I paid this payment over to the C. I. T. Corporation. I drove that car from the time of the purchase until I had reduced the balance upon the contract quite materially and England sold the car to a stranger to me, without consulting me or without asking my advice about it. In fact, I drove the car up in front of England's place of business one day and he was there discussing or talking [470] with a stranger that I did not know. He told this stranger that there was the car—if he wanted a car, that that was the very thing that he wanted. This car was one of the old series of Hudson cars. They discussed the merits of the car and the demerits of it, so far as that goes, got in the car, drove up around the block and it was sold to this stranger for an amount that I did not know at that time. England told me that he would make the matter all right; that he wanted me to have one of the new issues of cars that was coming out pretty

(Testimony of George W. Shute.)

soon. It was all right with me. The man took the car and drove it off. Said he was going to Washington or British Columbia or Oregon. Anyway, up in the Northwest somewhere. He took the car then and I think that I either walked home or England drove me home himself. I never had an accounting with England relative to that. After a time the new issue of cars came out. England, at the time that he had sold this car, told me that he would make me a cut in the difference between the retailer's price and the distributor's price, which was his business. I did not ask him what the cut would be. Naturally assumed that it would be half of it and, with that understanding, the new car finally came and I drove the new car off. I think that the new car—I drove it from in April until October or November—along there some time—and, immediately after the new car came in, the Hudson people changed the entire style of the car, so that it had an entirely new motor in it. I did not like that and so expressed it to England and told him that I thought that that was not a very square deal; that in view of the fact that the motor had changed, that he ought to have known it. He assured me that he did not know it but said that it was causing him endless trouble from people who had bought this first issue of the new cars. I had a little [471] trouble with it. It heated and manifested other imperfections, which caused me to run it back time after time to the place for adjustment and correction and talked to the mechanic about it and he said that it was one of those cars that he just simply could not understand what the trouble with it was.

(Testimony of George W. Shute.)

That was told to England and he told me that he would make it all right with it; that it made no difference to him about that; that he understood that those things existed and that he thought that I did; that he would make it perfectly satisfactory to me. This kept along until October of that year and, when I went on a hunting trip in October, I left the car in England's basement for two purposes. First, he said that he would like to have it left there so that he could dispose of it, and if he could and, second, that was a good place to keep it. When I came back from the hunting trip he told me that he had sold the car to some person out on Central Avenue. I think he told me it was a woman. He did not tell me her name. He told me the price that he had gotten for it and he did not tell me any of the details but did tell me that he had one of the new issue of cars that I could take and that it was there. He showed me the car and told me that I could take it when I wanted to. I took the car, made a conditional sales contract on it and drove the car on out. It was the car that is in issue here. At the time or about the time that I drove the car out, we had a talk about security upon the car and I told him that I thought he ought to have some sort of protection on it; that I had been having some trouble over this matter and that he was the one who was selling me the car and, if there was any protection to be created he ought to have it. We talked over the matter and he said "Well, how much do you think you ought to put on it? What do you [472] think it ought to be?" I said, "Well, I think that $1,500.00 will be a sufficient amount to

(Testimony of George W. Shute.)

cover all of these different transactions and, when we get at the proper amount, then I can settle it upon that basis." The conditional sales contract was drawn upon that basis and was recorded upon that basis, which was done for the purpose of protecting England in these transactions, which also involved the Essex car of 1927, which was purchased for Mrs. Shute, that is, the little car of 1925 was traded in on the 1927 one and the matter ran along that way. All right. When this matter came up, the car was practically a new car. Anything that there was in it really belonged to England and I ran the car back and told England about this thing. He said, "Run it in the basement and let her stay there." That was done and it stayed there and, when the matter came up, it was fully revealed and told to the trustee and I told them just exactly what had happened, as near as I could remember it and, later, when the books came in and they showed that the books as kept by him showed the distributor's price only on those books, England said to me, after the matter had been gone over thoroughly—

Mr. NEALON.—Now, I object to this hearsay, if your Honor please. We have allowed a great deal of it but I think this is pure hearsay.

The COURT.—No, the question of concealment—I think any conversation between him and England is admissible, as throwing light upon his conduct. [473]

A. England said to me, "I would rather give you a new car, Judge Shute, than to even discuss this

(Testimony of George W. Shute.)

or take any question with the trustee about it." He said: "Mr. Wedepohl kept these books to show the retail—to show the distributor's price and, when you add it all up and run it up, it does not show the cut that way and I had rather give it to you and throw it off than to have anything more to do with it." And just as soon as that was determined and just as soon as that situation was arrived at I told Mr. Nealon, "All right then, the car is yours, and if you want me to, I will pay you the blue book price on it," and I paid him the blue book price and that was all there was to it and then they accuse me of being a crook and perjurer.

Mr. MOORE.—Q. Judge Shute, explain this throw-off or cut. As I understand it, the A. E. England Company is distributor here for the Hudson and Essex cars. In other words he is what you call the wholesaler. Now, is that substantially correct?

A. He is the state distributor. Cars come to him and from him are distributed to agents over the state.

Q. And he sells those cars to the agents at one price and, of course, the agent sells them to the public at another price? A. Yes.

Q. Now, am I correct in assuming that this sum that was to be split between you and England was on some basis that never had been adjusted, consisting of the profit of the dealer would make on a resale, minus the difference between the price that

(Testimony of George W. Shute.)

England would give [474] this car to the dealer and what the dealer would sell it for? A. Yes.

Q. And that was about 20% of the purchase price, was it not?

A. Right around there. I don't know just exactly but that is about what it is. That is my understanding of it. I never have been told directly.

Q. Now, am I correct in understanding that at the time you gave this conditional sales contract there never had been any adjustment between you and England to ascertain how much you should pay him—what profit would have accrued to the dealer if you had bought the car directly from the dealer?

A. There never had been, no. In fact he never sent me a bill. I would pay him at times considerable sums. He never sent me a bill.

Q. Did you ever have a settlement or statement of account with England of the various car transactions?

A. No, I never did. Never was summed up.

Q. State whether or not, when you and England went over the matter of the purchase of this last car and giving the conditional sale, it was agreed between you that approximately $1,500.00 would be the amount that you would owe to England on the final adjustment of this split and all other items?

A. Yes, we concluded, in talking it over, that $1,500.00 would cover it.

Q. Now, Judge Shute, did you execute the conditional sale at the time you purchased the car? I

(Testimony of George W. Shute.)

will show you, to refresh your memory, Creditor's Exhibit 4. That seems to be an original conditional sale executed by [475] A. E. England Motor Cars Company, by E. A. Wedepohl, secretary, and by you and recorded in the office of the County Recorder on the 26th day of November, 1927. Is that the document you referred to?

A. Yes.

Q. Now, you did not file your petition in bankruptcy until— A. April.

Q. April, 1928? A. Yes.

Q. This transaction took place five months before? A. Yes.

Q. But you did give this conditional sales contract to England after demand had been made upon you by Miss Birdsall and you had practically been told that you were going to be sued by Mackay?

A. Yes, that had all been done at that time. I made up my mind that I was going to fight. That was my first inclination and then, after I had discussed it with the members of the firm, I changed my mind about it.

Q. Now, you are getting ahead of your story. Now, prior to the execution of this conditional sales contract, all of the cars that you bought from England were bought on open account, were they not?

A. Yes.

Q. So, when you came to buy this new car, in view of the threatened litigation, you suggested that it be covered by conditional sales and that conditional sales price—I mean the price of this car

(Testimony of George W. Shute.)

being figured at what you and England have figured out—I mean you and England agreed you would probably owe him on a final adjustment of all accounts and including the split of the dealer's profit? [476]

A. Yes. I am not too sure that the other cars were not covered by conditional sales.

Q. The record does not show it. Judge Shute, did you consult with Mr. Lewis as to whether or not you should list that car at the time you prepared your first schedule? A. Yes.

Q. Did you and Mr. Lewis look up the law in regard to listing property covered by a conditional sales?

A. Yes, we looked at Corpus Juris to see about what the situation would be.

Q. I show you Volume 7 of Corpus Juris and refer you to page 124, Section 214, and ask you if that is the section of Corpus Juris that you and Mr. Lewis considered at that time?

A. That is the one.

Mr. MOORE.—Q. May I read it? "Where the contract was one of conditional sale, the reservation of title in the seller until payment for the property is made will prevent the title from passing to the trustee, although the goods were in the possession of the bankrupt, unless, under the state law, such reservation is ineffective as against the creditors of the buyer, because of failure to record or otherwise, or unless the transaction is such that the title

(Testimony of George W. Shute.)

did really pass to the bankrupt, and the reservation of title in the seller is merely colorable."

Q. Did you, on your first examination before the referee, tell about this car and where it was located?

A. Yes.

Q. At the time of your bankruptcy how much did you think you still owed on this car?

A. I was of the impression that it was around a thousand dollars. [477]

Q. And you so testified at your first examination?

A. Yes.

Q. Now, there has been introduced in evidence here a note and chattel mortgage, showing that you borrowed $750.00 from the First National Bank of Arizona on the 7th of April, 1928, and secured that debt by a chattel mortgage on this car. Will you explain that transaction?

A. Yes. When I went down and borrowed the $750.00, for the reason that I was rather insistent upon Mr. Ganz taking a chattel mortgage for anything that might finally show that there was in that car. He did not want to take it at first and I told him that I thought that they ought to have it, in view of the conditions that existed at that time, and he took it finally and that was the reason for the giving of the chattel mortgage.

Q. And that chattel mortgage was recorded?

A. Yes, I understand so. I did not record it.

Mr. MOORE.—Now, may it please the Court, I desire to read into the record the order of the referee which it is alleged the bankrupt has failed

(Testimony of George W. Shute.)

to obey, which is assigned as one of his grounds for not being discharged. This order is dated the 1st day of May, 1928, signed by R. W. Smith, referee in bankruptcy, and I am reading from the original order. "Upon motion of Alice M. Birdsall, attorney for J. J. Mackay, a creditor of said estate, that said bankrupt be required and ordered to amend his schedules heretofore filed in said matter, upon the grounds that the testimony of said bankrupt, given under examination by said attorney, discloses that said schedules are incorrect and untrue. It is ordered by the referee that said bankrupt be and he is hereby [478] required to file new schedules or to so amend said schedules heretofore filed by him to conform to the facts and provisions of the Bankruptcy Act. Dated this 1st day of May, 1928."

Mr. MOORE.—I read the order and now I will read the proceedings at the first examination on that point.

Mr. MOORE.—Page 16 at the middle of the page. "Miss Birdsall: I move that the bankrupt be required to amend his whole schedule to conform to the act. He says that he did not have to schedule all of his debts; it is my understanding that he does." Now, the referee, on page 17, says, "I think it would be better to file and entirely new schedule as this is short; have it include these omissions." And the omission was only this in regard to the Mackay debt and the bank. Now I will ask you, Judge Shute, if you have ever seen a copy

(Testimony of George W. Shute.)

or had knowledge of the order—written order made and filed by the referee, which I read just a while ago, until it was offered for evidence?''

A. I don't believe that I ever saw it, Mr. Moore. [479]

Cross-examination by Mr. NEALON.

Q. Judge Shute, on April 17, 1928, you knew that you owed the First National Bank of Arizona $750.00, did you not? A. Yes.

Q. I call your attention to Schedule A–2 in the Creditor's Exhibit No. 2, being the first schedule you filed, and call your attention to the printed part of that schedule at the top, which says, ''Creditors Holding Securities. N. B. Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Acts of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.'' And I call your attention further that in this Schedule A you have inserted therein the word ''None,'' and signed that schedule at the bottom. That is true, is it not?

A. The schedule so shows.

Q. Then, the schedule was signed by you?

A. Certainly.

Q. And at that time you knew that you owed the First National Bank the sum of $750.00, did you not? A. Yes.

(Testimony of George W. Shute.)

Q. Now, I call your attention to the oath to that schedule. "United States of America, District of Arizona. On this 17th day of April, A. D. 1928 before me personally came George W. Shute, the person mentioned in and who subscribed to the foregoing schedule, and who being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy." That oath is signed by you? A. Yes.

Q. You knew at the time the terms of the oath when you signed it? [480] A. I thought I did.

Q. You knew that you owed the First National Bank of Arizona the sum of $750.00, secured by a chattel mortgage on an automobile? A. I did.

Q. Which is this Hudson car that has been so much discussed? A. Yes.

Q. Now, after you had been ordered by the referee to file an amended schedule, you filed in Schedule A—I mean you set up in Schedule A this debt to the bank of $750.00, with the full description of the car that was secured thereby?

A. The schedule so shows.

Q. And that particular page is signed by you?

A. Yes.

Q. Now, Judge Shute, had you put the description of the security, together with the existence of this note, in your first schedule filed, it would have disclosed that you had this Hudson car, would it not? A. It would.

(Testimony of George W. Shute.)

Mr. NEALON.—Q. Then, why didn't you put it in?

A. For the reasons that I have heretofore stated.

Q. But, I am calling your attention to the fact that if you had put it in the trustee would have had information in the schedule of an asset that had been omitted from that schedule?

A. Why, certainly.

Q. Is that the only explanation you have to make, Judge Shute, that heretofore already made?

A. I have made the explanation as best I can why it was left out, not with any idea of concealing anything from the trustee. I drove the car around here at that time. It was a matter of public record. I was using it every day. Everybody knew it. Miss Birdsall had no hesitation in referring at once to the car. It was well known and fully disclosed. [481]

Q. Do you know where Miss Birdsall got her information? A. I do not.

Q. If she had not had that information, it would not have appeared anywhere in your schedules or other information?

A. Why, I can't see that. I can't say that, Mr. Nealon.

Q. When did you deliver the car to Mr. England?

A. I am not sure about the date but I think it was just shortly before the filing of this schedule.

Q. Was it before or after you mortgaged the car to the bank?

(Testimony of George W. Shute.)

A. Now, if you will give me the date of the mortgage, I can tell you. I am not sure whether it was before or after. I think it was after. That was the 7th.

Q. As a matter of fact, you testified before the referee that you turned that car back to England, didn't you? A. I did.

Q. Now, you would not have mortgaged it to the bank after turning it back to England, did you?

A. I think probably I might have done that very thing.

Q. You do? A. I might have done that.

Q. And, yet, the testimony that you gave before the referee was that you were turning it back on the conditional sales contract, was it not?

A. Exactly.

Q. And yet, you mortgaged it as your own property to the First National Bank thereafter?

A. I mortgaged whatever interest that I had in it, Mr. Nealon, and it was done with the full intention of protecting them, if there should be anything left when the matter was finally worked out with England.

Q. You were present when Mr. Sylvan Ganz testified at a subsequent meeting of creditors, were you not? [482] A. I was at one.

Q. You made this loan directly from Mr. Sylvan Ganz, did you not? A. I did.

Q. He is the vice-president of that bank, is he not?

A. I believe that is his official position.

(Testimony of George W. Shute.)

Q. And you recall his testimony that nothing was said to him about there being a conditional sales contract upon the property, do you not?

A. I remember it very well.

Q. Was he mistaken about that?

A. Nothing was said?

Q. Yes. A. No, he is not mistaken.

Q. You did not disclose to the bank, when you made that mortgage, the existence of this conditional sales contract to which you referred?

A. To Mr. Ganz?

Q. Yes. A. No, I did not.

Q. Now, you subsequently testified before the referee that you had an interest which you thought amounted to something like a thousand dollars in that car, did you not?

A. I don't believe I testified to that.

Q. You testified that you had some interest in that car, did you not?

A. I stated that I thought that I had paid it down to about a thousand dollars. The car was practically a new car.

Mr. MOORE.—Q. That is, where you would owe a thousand dollars on it, Judge Shute?

A. Yes, I think that is my statement concerning it.

Mr. NEALON.—Q. Didn't you testify after that as to the amount [483] that you considered that you had in that car?

A. Well, if I did, I don't remember it.

(Testimony of George W. Shute.)

Q. Now, Judge Shute, before preparing your schedules, did you or did you not ascertain from the A. E. England Motors Company what amount, if any, was due on that car? A. No, I did not.

Q. Then, how could you have made this oath in regard to the monies that you owed?

A. I just made it as it was, as I told you. I turned the car back. It was turned back for the purpose of protecting that amount. Under the terms of the conditional sales contract, strictly speaking, that car immediately, in my opinion, reverted to England.

Q. Did you relinquish your interest in it?

A. That would be a relinquishment; that very act.

Q. Did you, by any instrument, relinquish your interest in it? A. No.

Q. You claimed an interest in it subsequent to that time, did you not?

A. I think I told you, Mr. Nealon, that Mr. England and I had always been the best of friends; that he was a client of mine; that if, when the matter was all staightened out, I could resume that contract and take care of it, I expected to do that and I expected that he would favor me, if he could.

Q. You knew, at the time that you prepared this schedule, that you did have an interest in that car, which passed by operation of the law to the trustee from the filing of your petition in bankruptcy, did you not? A. No, I did not.

(Testimony of George W. Shute.)

Q. You had looked at the bankruptcy law, had you not, prior to filing your schedules?

A. Mr. Lewis and I talked it over and read the section out of [484] Corpus Juris and determined at that time that the title did not pass to the trustee because of this conditional sales contract.

Q. Are you not aware that any interest that you have, which might be disposed of in any manner, passes to the trustee? A. I am now.

Q. You are now?

A. Yes. I ascertained that very soon after beginning this bitter experience.

Q. I call your attention to Schedule B –4 of your first schedule in bankruptcy, in particular, to the item "Personal Property" and the filling in in answer thereto "None." Did you or did you not have other personal property at that time?

A. May I see that, Mr. Nealon?

Q. Yes.

A. I did not quite catch that question.

Q. This particular thing to which I am calling your attention, now, personal property.

A. I thought, when that was made, that that expressed it truly, Mr. Nealon.

Q. That is not an answer to my question and I move that that be stricken, if your Honor please.

The COURT.—Motion denied.

Mr. NEALON.—Q. Now, will you answer the question that I asked you?

A. I thought I had answered it.

Mr. NEALON.—Q. When you saw this part of

(Testimony of George W. Shute.)

the schedule, did it not suggest to you that you should have placed therein your interest in the Hudson car?

A. No, it did not.

Q. It did not? A. No.

Q. I call your attention to Schedule B -3. The particular part [485] is C, policies of insurance, and the answer that you have given therein, "None." That is correct, is it not? A. Yes.

Q. At that time, you did have this $10,000.00 insurance policy upon your life, did you not?

A. Yes.

Q. You knew you had it at that time?

A. I did.

Q. Why didn't you put it in your schedule?

A. For the reasons that I have heretofore stated.

Q. But, you notice that this a direct question for policies of insurance?

A. We determined that that could not possibly apply to policies that had no loan value, I think.

Q. Judge Shute, shouldn't you have listed that as required by the schedule forms and left the determination of that question—

A. I certainly should.

Mr. MOORE.—Q. Judge Shute, that last answer was based on your experience in this case, isn't it?

A. Exactly.

Mr. NEALON.—Q. Now, you had had this policy in your possession for how long, Judge Shute?

A. From the date of its writing until the date of the schedule.

(Testimony of George W. Shute.)

Q. About how many years was that?

A. I am a little bit hazy about the year that it was written but I think it was in 1924.

Q. Now, you were preparing a schedule of your assets and liabilities in order to be discharged in bankruptcy from the obligation listed in your schedule, were you not? A. Yes.

Q. And you knew that you would have to make an oath both as to your assets and liabilities at that time? [486]

A. I don't quite get that question.

Q. You knew, at the time that you were preparing these schedules, that you would have to make an oath to that, did you not? A. Yes, I did.

Q. Now, this insurance policy was in your office, was it not? A. In the safe.

Q. In the safe in your office and you could have, by examining it, ascertained the loan value from the policy itself, could you not?

A. Yes, very easily.

Q. Did it not occur to you that it was your duty to have examined and seen whether that was an asset or not before you reported none?

A. So sure was I of what the contents of the policy was, based upon the conversation which I had had with Miss Crockett concerning the character of insurance and the kind of insurance that, when Mr. Lewis and I were talking it over, I says, "I know just what is in it, because of the conversations that I have had with Miss Crockett," and all I would have had to have done would have been

(Testimony of George W. Shute.)

to have walked through the rooms and had the safe opened up and opened up the box and have gotten it, Mr. Nealon, and have determined that absolutely. A very foolish thing, I will admit, for me to do.

Q. Now, you have been either a practicing attorney or on the bench for how many years?

A. I was admitted to practice in 1902, I believe.

Q. And, with the exception of the eleven years or so you were on the bench, you have been a practicing attorney all of that time? A. Yes.

Q. The firm of which you are a member and were a member at this time does a considerable business in insurance, does it not—insurance cases? [487] A. You are speaking generally?

Q. Yes. A. Yes, we do.

Q. They also do considerable business in bankruptcy, in the way of having interests of clients to protect in the different bankruptcy proceedings?

A. If there has ever been a case in bankruptcy in our office, except one, which is the one that I mentioned, I don't know it.

Q. You were trustee in bankruptcy in one case, were you not? A. Trustee?

Q. Weren't you? A. Why, no.

Q. Weren't you trustee in that truck company case?

A. Not that I know of. I have no recollection of being trustee.

Q. I have been informed that you were.

A. No.

Q. I may be mistaken. Anyway, Mr. Arm-

(Testimony of George W. Shute.)

strong, the senior member of your firm, is thoroughly posted in bankruptcy matters, is he not?

A. You may ask Mr. Armstrong. I am sure I don't know. Mr. Armstrong is a most excellent lawyer.

Q. I agree with you fully. Didn't you testify earlier that you consulted with older heads in the firm in regard to this matter before going into bankruptcy? A. In regard to what matter?

Q. Bankruptcy.

A. In regard to whether I should go in or not, yes.

Q. You were referring then to Mr. Armstrong?

A. Yes, and to Mr. Moore.

Q. Now, I call your attention to Schedule B.–3, unliquidated claims of every nature, with the estimated value, and ask you why you did not put the Wesley Goswick matter in under that heading, [488] instead of answering with the word "None?"

A. For the simple reason that there never was any.

Q. For the reason that there never was any what?

A. Agreement with Wesley Goswick or any contract or anything else.

Q. Was this arrangement between Packard and Goswick brought about by you before or after this bankruptcy proceeding? A. What do you mean?

Q. Where you brought the two together and arranged a settlement between them?

A. Before. '27, I think it was. August, '27.

(Testimony of George W. Shute.)

Q. But, at that time, one of these men had acknowledged that you were entitled to a payment of 10% of that sum, did he not?

A. In the way that I have related it, Mr. Nealon.

Q. Well, he did acknowledge that?

A. Yes, he did. Rather pressed it in upon me during these conversations that I had with him.

Q. He was claiming to be an equal partner in that deal, was he not, with Mr. Goswick?

A. Yes, so he told me.

Q. So, you had an acknowledgment of that debt from a man who claimed to be an equal partner in that proposition, did you not?

A. As I told you. As I related the circumstances.

Q. You did have that acknowledgment from him?

A. Yes, that statement.

Q. And, you disclosed all of these facts to Mr. Goswick at the time you got from him the settlement in accordance with your suggestions, did you not? A. Oh, I don't think so. I just—

Q. Didn't you testify to that on your direct examination, Judge Shute?

A. I told Mr. Goswick at the time that the basis of the settlement [489] was this and told him just exactly what the basis was but I did not go into the facts of it at all with him. He was perfectly satisfied with it. In fact, his instructions to me, at the time that I talked to him about it, was that anything that I did in the matter was perfectly all right; for me to do it and go and get it settled up for him, if I could, and he would do

(Testimony of George W. Shute.)

anything, deed any part of the property to Packard.

Q. May I call your attention to the fact that Mr. Moore asked you if you disclosed the facts in regard thereto to Mr. Goswick?

A. Whatever I said to Mr. Moore, I will say now, whatever it was.

Q. And didn't that include at that time the deduction of the $70,000.00 which has been heretofore testified to?

A. It certainly did. That was the basis of the settlement.

Q. Now, did you not tell Wesley Goswick at that time how those figures were arrived at?

A. I did.

Q. And, therefore, you told him at that time that Mr. Packard had acknowledged an indebtedness to you in the matter, did you not? A. I did.

Q. And, after your making that statement to Mr. Goswick, he made the settlement in accordance with the proposition made by you in that case?

A. Yes.

Q. At the time that the $5,000.00 payment was made, you were paid the sum of $500.00, one half of the payment being made by Mr. Goswick and the other half by Mr. Packard, were you not?

A. I don't think so.

Q. Then, if Mr. Packard said so, he was mistaken, is that true?

A. I think Mr. Packard was in error, if he says so.

(Testimony of George W. Shute.)

Q. Now, prior to the making of this arrangement between Mr. Packard and Mr. Goswick, you received $1,000.00, did you not? A. No. [490]

Q. Did you not receive $1,000.00 when the $10,000.00 was paid? A. I did not.

Q. Then, Mr. Goswick's statement to that effect is erroneous, is it? A. Yes, it is erroneous.

Q. Did you receive $1,000.00 from him then, Judge Shute?

A. There was $1,000.00 or somewhere in the neighborhood of $1,000.00 that came in during that year but there was none of it ever was—ever came to me for any purpose until after this settlement, for the reasons that I stated on my direct examination yesterday. I stated, when I checked back on my hand-book and statements and go back through the transaction that is of record, it is quite apparent that there was $295.00 came into me from this source. A little later, there was $500.00 came in from this source and, as I testified before the referee, at one time, I remember having a discussion with Goswick about this overlapping; at which time he gave me $500.00, which would make all I can remember of it, unless there is a duplication of this two $500.00 items—of $500.00, a thousand dollars, $200.00, $1295.00. That covers this transaction. Now, there may have been a duplication of this two $500.00 items. I am not prepared to say but we will say, for the sake of this question, that there was not; that they all came in—

(Testimony of George W. Shute.)

Q. Well, didn't you get a thousand dollars in June or thereabouts of 1927? A. No, I did not.

Q. Did you get any during the summer of 1927?

A. That is when this settlement was made, in August of 1927. Then is when whatever came in began to come in after this arrangement was made with Packard and after the settlement was had and not before that. In fact, Goswick was out of the state from the 1st of June until some time in August.

Q. And wasn't that the reason that the payment was not made to [491] you at that time?

A. What payment do you refer to?

Q. I am referring to the payment of a thousand dollars?

A. Absolutely not. Absolutely not.

Q. You recall that Mr. Goswick testified to a payment of a thousand dollars?

A. Mr. Goswick testified to the payment of a thousand dollars, yes.

Q. That was before the settlement, was it not?

A. I don't know what his understanding was about the time but I do know that there was not any money paid or any part of any money until after this settlement with Packard in August of 1927, because, as I stated, he was out of the state and because he asked me to check back on that—when he came through Phoenix, he asked me to check back on that check, which was Mr. Foster's personal check; that they would not credit him with it until it cleared through New York.

(Testimony of George W. Shute.)

Q. And after that time you—or at that time Mr. Goswick said that he was going to remember you?

A. Yes, he did that day when it was all over.

Q. What did you say?

A. I don't know what comment I made to it. Probably the usual comment. We talked about it. We always talked very freely about these things and always the very best of expressions concerning the work that I had done and what I had done for them but, just what I said, I don't know but I do know that it was in my mind, in view of the fact that we had this conversation, in view of the settlement that was made, that that was about what was in his mind.

Q. What did you mean about what was in his mind, Judge Shute?

A. As to what he intended to do for me.

Q. As to the amount, you mean?

A. Yes, that was it. [492]

Q. That was understood, then, that he was to pay you a definite amount?

A. No, no amount was ever mentioned.

Q. No amount was ever mentioned? A. No.

Q. Either at that time or any subsequent time?

A. I don't recall that there was, Judge Nealon.

Q. You would be pretty apt to recall it, if there was such a conversation?

A. That is sort of argumentative. I have told you what I can remember.

Q. Well, you feel pretty sure that there was no

(Testimony of George W. Shute.)

conversation in regard to it, do you, where an amount was mentioned?

A. That is the only one that I can remember where we talked about it, that is, until this year.

Q. Now, let me ask you what you had in mind when you wrote to Mrs. Holmes on November 16, 1927. I quote the last part of the letter. Have you a copy of this, Mr. Moore?

Mr. NEALON.—Q. "I have about $2,000.00 coming to me on December 8 and feel sure it will be in at that time. From this, I will settle that note in full." What $2,000.00 were you referring to?

A. I was referring, without any doubt in the world, to this conversation that I had had with him at the time this settlement was made up.

Q. And, why did you put the amount of $2,000.00 in this letter, if there was no amount mentioned between you at that time?

A. For the simple reason that I have heretofore stated that that was running through this whole settlement.

Q. What was running through the whole settlement?

A. The matter of Packard saying, "You are entitled to 10% of these payments and Henderson is entitled to $50.000.00" and, when that settlement was made with the expression that Mr. Goswick [493] uttered at that time left in my mind the impression that when he received this next payment of $20,000.00 that that was just what he was going to do. That was in my mind.

(Testimony of George W. Shute.)

Q. It was in your mind then that you would get $2,000.00 from him at that time? A. Yes.

Q. That is, on December 8, you expected that to be paid? A. That was the date of the payment.

Q. And that was the date of the payment from Foster—that it was due? A. Yes.

Q. And that is the $2,000.00 in the check deposited by you on December 31?

A. That is the $2,000.00.

Q. Now, I will ask you why you used this particular language, Judge Shute, in this letter, "I have about $2,000.00 coming to me on December 8"? Why did you use that language that it was coming to you on December 8?

A. Well, I have explained it about as nearly as I can, I believe. In fact, I think that where I say "about $2,000.00," there would be in my mind, probably, a reservation that probably that would not be the amount. I am not sure but that is the reason for it.

Q. You do not say that you are expecting a gift, a loan or anything else and that you have that in mind, did you?

A. What; that it was a gift, a loan or anything else?

Q. Yes.

A. Why, yes, I had it in mind that it was a gift or loan or something else.

Q. And, then, would you say in a letter of November 16, that you have about $2,000.00 coming to

(Testimony of George W. Shute.)

you on December 8, if you had only a suggestion of a gift at that time? [494]

A. That is exactly the reason that I put it in there. You do not understand, Mr. Nealon, the relation that exists and has existed between these people and myself over a period of—I will say of twenty years—even longer but very close since 1910.

Q. The mere fact that 10% was paid you at whatever times these payments were made up to last June—up to and including last June is merely a matter of coincidence, then, is it?

A. Is that question asked me for the express purpose of getting me to say that there was paid me at that time and to draw me into saying something that is not true? I have told you that I did not receive anything out of the first payment at all; that I did not receive anything out of the June payment, because there was no payment made in June to Packard or to me and that the only consideration that I received from the June payment came along, as shown by my statements, in little amounts that had come to me not as a payment or as a recognition of a debt or anything of the sort but as a recognition of what I had done for them in the years preceding and for no other purpose.

Q. You will bear in mind the testimony of Mr. Goswick?

A. I bear in mind nobody's testimony but mine.

Q. Now, the $8,000.00 was paid you in June of 1928, was it not? A. Yes.

Q. At the time that the $82,500.00 or the amount

(Testimony of George W. Shute.)

of that payment, less the previous small payments was paid to Mr. Goswick, was it not?

A. I don't understand that question.

Q. There was approximately $80,000.00 paid to Mr. Goswick in June of 1928, was there not, on the same L. E. Foster contract?

A. $82,500.00 was paid to Mr. Goswick, as I understand it, between the 8th day of the preceding December and that day, in the form of royalties and payments, to make up $82,500.00 paid on that day. [495]

Q. And the payment of $8,000.00 was made to you about that time?

A. There was no payment made to me of $8,000.00 on that date.

Q. There was a payment, you mean, made at some other date?

A. No, I don't mean anything of the sort.

Q. You received $8,000.00 from Mr. Goswick, didn't you? A. I did.

Q. When? A. I think it was on the 8th.

Q. As a matter of fact, you were in Globe at the time the $82,500.00 was paid, were you not?

A. I was.

Q. And right at that time you received from Mr. Goswick, if you object to the word "payment," $8,000.00? A. I did.

Q. Was that merely a coincidence?

A. What do you mean merely a coincidence?

Q. That he gave it to you at that particular time?

A. Why, no coincidence at all.

(Testimony of George W. Shute.)

Q. None at all? A. No.

Q. No coincidence between the two payments then? A. No.

Q. Now, on June 15, there was a meeting of creditors which you attended, at which this payment to Goswick of $82,500.00 was freely discussed, was there not, and testified to by you?

A. The record will show how freely it was discussed.

Q. Don't you recollect?

A. No, I don't recollect how freely it was discussed.

Q. You don't recollect that anything was said about it at that meeting at all?

A. I don't remember what was said about it at that meeting at all. I do remember that at some one of the meetings I told you [496] about this sale, about how it happened, told you where the options lay, where you could get the papers, volunteered to give you copies of them, if you wanted them, at one of these meetings. I don't remember what meeting that was.

Q. That will appear in the record?

A. I think so. If it does not, it was one of the discussions that we had about the matter and I think it was in the record, although I am not clear on that.

Q. Now, you did not, on June 15 or at any subsequent time before the Saturday before Thanksgiving of last year, mention to me anything about having received the $8,000.00?

(Testimony of George W. Shute.)

A. I don't think I did.

Q. Why did you mention it to me at that time?

A. When?

Q. The Saturday before Thanksgiving of 1928.

A. Because there came direct to my attention the fact that you and Miss Birdsall were fooling with this option and attempting to show that I had a contract with Goswick for the sale of that property, under which I was to receive 10% of the amount. I went right straight to you with it the moment that I heard it—the moment that it came directly to me and laid the whole matter before you just as fairly and as honestly and as fully as I possibly could.

Q. And that was the first mention made of this $8,000.00?

A. I think so and I asked you too, at that same time, Mr. Nealon, "Now, in view of this situation as I have told it to you, have you any interest in it," and you said, "No, if that is the truth of this situation, we have no interest whatever in it."

Q. You have testified repeatedly that you had no interest in it, have you not?

A. I certainly have.

Q. And, yet, at that time, you had received payments from both [497] Packard and Goswick, had you not?

A. I have not received any payments on any sort of a thing of the kind.

Q. You did receive money from Mr. Packard, did you not, Judge Shute?

(Testimony of George W. Shute.)

A. I have testified to those payments, I think, or receipts or whatever you please to call them, just as fully as I can remember them.

Q. Well, I do not recall whether you stated that you received money from Mr. Packard at these times or not.

A. He and I are at a little variance upon the amounts and the payments or receipts or whatever there were. He came—I have no recollection that anything ever came in to me until after the August settlement from anybody. I do remember that I had a talk with Mr. Goswick about his first payment, in which I told him that they were very uncertain things; that it was only a small matter that had come in to him; to keep his money; that I had not done anything to warrant his giving me anything out of it at all.

Q. Am I to understand that you received no monies from Mr. Packard at all?

A. No, you are not to understand anything of the sort.

Q. Well, then, explain to me what monies, if any, you received from Mr. Packard.

A. I have tried to explain it, Mr. Nealon, by saying that the $5,000.00 payment never came to me from any source, as I remember it, and the reason that I say that is because of this conversation that I have had with Goswick and the first amounts that I can remember that ever came to me that had any connection whatever with this was—came in after the settlement of August of 1927, a part of which

(Testimony of George W. Shute.)

came from Goswick and a part of which came from Packard. Just the proportions or the amounts, I don't remember, but I think there was $295.00 from Packard, if my records are correct, and [498] $500.00, if my records are correct, from Goswick.

Q. We will leave that for the time being. Now, may I ask you why you made the figures when Mr. McBride called on you in November of last year?

A. Why I made the figures? For the simple reason that I made them for you when I explained it for you. That is so that there was a graphic illustration of it. I says, "Here was the amount. Here was the way it was arrived at. Here was the purchase price. Here was what Packard claimed was coming to him. Take it out. And that would make that thing more easy to figure out.

Q. Now, you have received the monies in accordance with those figures which you have before you, whether it be by gift or otherwise, have you not?

A. I have not.

Q. You have not? A. No.

Q. You received the $2,000.00 when the $20,000.00 was paid, have you not? A. Yes.

Q. And you received the $8,000.00 when the payment was made last June, did you not?

A. Permit me to change that last answer. I did not receive the $2,000.00 when it was paid. I received it on the last day of December.

Q. Well, short time—

A. Well, some of these things are rather important. That $2,000.00 was received, as I testified,

(Testimony of George W. Shute.)

through the mail in a letter—in an envelope that contained no letter, on the 31st day of December, 1927. The $8,000.00 was received, I think, on the 8th of June. I am not positive about that date but I think it was on that date, because I think I made the trip over and back at Goswick's request the same day. [499]

Q. Now, let me ask you this; you had rendered valuable service to Mr. Goswick in connection with that particular property prior to the time that this option was entered into with Mr. Foster, did you not? A. Yes.

Q. And that saved him many thousands of dollars, did it not? A. What do you mean by that?

Q. Well, I mean you saved to him many thousand dollars of property?

A. I did not save him anything, no.

Q. Didn't you, in your testimony before the referee, say they were taking the stuff off of there and that he sent for you and you went up there to prevent that being done and that you succeeded in saving valuable machinery from being removed from the property?

A. If you put it in that light, yes. That is the result, probably, of my advice to him at that time as to the moving off of a large quantity of personal property that was there.

Q. You went up and served the notice or had it served?

A. No, I told him to take it down the next morning and to be sitting on the road and just tell them

(Testimony of George W. Shute.)

not to take off any more property. I went on back to the camp on the head of Gordon Canyon.

Q. As a matter of fact, ever since Mr. Goswick located these claims, you have been rendering him valuable services, have you not?

A. I should say I had and for years and years before that.

Q. Long prior to this deal, there was an understanding that you would get 10% whenever that property was sold, wasn't there?

A. There certainly was not.

Q. There was a direct understanding about that in regard to the option to the Ohio people, was there not?

A. Yes, there was, because I did all of the work. I made the [500] deal, carried on all of the negotiations with Mr. Bedford, entertained him in my own house, went over the matter with him in my own house and did every single step incidental to the carrying of that contract into execution.

Q. And those payments were made to you in regard to that contract both by Mr. Goswick and by Mr. Packard half and half equally, were they not?

A. I don't remember whether they were made that way or not. I did get $500.00 out of that first payment, either in part payments from each or all came from Goswick and I am not sure which.

Q. I want to call your attention to the letter that you wrote in February 18, 1926, to Mrs. Holmes, shown in her deposition here. "Referring to the first mortgage on my place, the situation is simply

(Testimony of George W. Shute.)

this, it can be sold at any time for more than enough to pay off the mortgage. On the first of the year, I made a contract for the sale of some mining properties, out of which I will realize, at the end of this year, $4,000.00, over and above all other income that I have. This money should come in without fail, as the contract for the purchase of the property is going along until the people who are taking it have invested some $25,000.00 already and they will be obliged to take it, because of the expenditures thus far made." What were you referring to in that letter to Mrs. Holmes, Judge Shute?

A. Referring to this Stalker and Bedford option.

Q. And you expected to get $4,000.00 out of that?

A. That is so the letter states.

Q. And the letter states truly your expectation, does it not? A. I imagine so.

Q. In the examination of May 29 before the referee, you were asked this question, were you not, "When was this $500.00 payment received from Mr. Goswick?" and you answered, "In December, 1927." That is correct, is it not? [501]

A. You mean that the record shows that?

Q. Yes, that the record shows that.

A. You have read it. I imagine that is true.

Q. You answered that way, did you not?

A. I think so. That is, I am a little bit uncertain about that month. I can't remember that I had that month in mind.

(Testimony of George W. Shute.)

Q. I call your attention to our copy. You may examine the original, if you wish.

A. No, I don't care to, Mr. Nealon. Examine me from your copy.

Q. I call your attention to this, to refresh your memory. When was this $500.00 received? (Handing document to witness.)

A. It seems that I made that statement.

Q. Now, to what $500.00 were you referring at that time?

A. Evidently that was to one of these payments that came in after August of 1927. Now, just when this came in, as I stated, I am not clear to this day. I don't know *or* just what the amounts were or just where they came from. I am not clear.

Q. Now, when that subject was up before the referee and you testified to this $500.00 payment in December, did that not suggest to you the receipt of the $2,000.00 item? A. It did not.

Q. From Wesley Goswick?

A. It did not. That $2,000.00 item, Mr. Nealon, I never could clear up in my own mind until Goswick and I went over the matter and then even he and I had to go back to his wife to check it up, so as to get it straight.

Q. As to the time or the amount, Judge Shute? As to the payment itself—as to the $2,000.00 payment? You mean that the payment of this $2,000.00 had passed completely from your mind?

A. That particular check had passed completely from my mind and, when we began to work with it,

(Testimony of George W. Shute.)

we went through these records and we found this $1900.00 deposit. We found that that must have been a [502] $2,000.00 deposit. The only thing in the world that I could have had anything at all that had any relation to it was this previous conversation that I had had with Goswick. I went to him and talked it over with him and he said, "I don't know whether I sent you any money at all on that payment or not," and we went to his wife and then she called his attention to the fact that when they came back from California in December of '27 that he had mailed me this check from out on the road between here and the camp.

Q. Now, you mean for us to understand that your business transactions were of such size and volume that a $2,000.00 payment to you in December of 1927 would entirely escape your memory in an examination on May 29?

A. Mr. Nealon, you may understand whatever you please. I am telling you what the situation was.

Q. You had made up your income tax return in March following the receipt of this amount, had you not?

A. The income tax return will show when it was made up. I never make them.

Q. And you reported a thousand dollars from Goswick in that income tax return?

A. That was for the preceding year, I think. Not this. At least, it had no relation to this, because it was not reported, which was rather an

(Testimony of George W. Shute.)

astounding thing to me when it was finally discovered.

Q. You did report a thousand dollars, did you not? A. Yes.

Q. And that did not refresh your memory in any way in regard to the $2,000.00?

A. That had no relation to it in the world.

Q. No, I mean it did not refresh your memory in any way when you make up that income tax and swore to it? A. It had not come in. [503]

Q. Why, I call your attention—

A. Oh, you mean for '27?

Q. 1927, yes. A. Yes, that is right.

Q. That did not refresh your memory at all?

A. No, it did not. It was returned as the thousand dollars that had come in through the year, without any reference to this check at all.

Q. Now, did you keep any record of this matter at all?

A. Well, it is reflected, as I say, in the bank statements and bank deposits but in no other way. I kept no book record of it at all. By that, I mean no record of income or outgo at all so as to show just what it was. I did not think it was necessary.

Q. Where did you keep the record of the thousand dollars that you reported?

A. That was purely my memory.

Q. You had no record then of these business transactions whatsoever? A. Only as I stated.

Q. You have just stated, with reference to the

(Testimony of George W. Shute.)

thousand dollars, it was entirely a matter of memory with you? A. Yes.

Q. Now, in reporting your income tax, the only record you have to guide you was your memory; is that right?

A. Yes, that is all I had, that is, all these amounts that might come in from sources that were not from the regular source of my income.

Q. That is, not from your receipts from Armstrong, Lewis & Kramer?

A. Yes. They are not very many and not hard to remember, as a rule, isolated instances.

Q. Now, I am going to ask you, on this same examination of [504] May 29, if you were not asked, immediately succeeding the question to which I have referred, "Have you ever received any other amount from him:" referring to Wesley Goswick, and your answer being, "Only for fees. They would go into the firm." That is correct, is it not?

A. I think so.

Q. The next question asked you, then, was this, "So this $500.00 was not fees," and you answered, "No." That is correct, is it not? A. Yes.

Q. And yet you reported a thousand dollars in your income tax returns? A. Yes.

Q. Now, how do you account for your answer to the question, "Have you ever received any other amounts from him"—your answer to that question, "Only for fees. They would go into the firm?"

A. Do you mean the discrepancy between the two, Mr. Nealon?

(Testimony of George W. Shute.)

Q. I mean, why did you answer that you had only received this amount of $500.00 from him?

A. I thought I was answering it truly. I was trying to make an accounting of anything that might be necessary to you and was trying to show from my memory, without reference to any book or anything of the sort, the different amounts, so that you might realize anything that was to be realized from it.

Q. Judge Shute, you knew that you were called before the referee for the purpose of examination as to your resources and liabilities and the disposition of your assets, did you not?

A. Yes, I did.

Q. Now, on May 1, you had been notified to come back—or May 22? That is correct, is it not?

A. Yes.

Q. And, on May 22, it was inconvenient for you to be there and, [505] for your accommodation, the matter was put over until the 29th?

A. Whatever the record shows.

Q. Now, did you make any preparation to correctly answer the questions that might be asked you in regard to your receipts?

A. That might be asked me?

Q. Yes.

A. I had no idea of what you would ask me, Mr. Nealon.

Q. Didn't it occur to you that the counsel for the creditor and the trustee would ask you in regard to the sources of your income?

A. Exactly. I made rather a gross mistake, probably. I won't put it—with the idea that the

(Testimony of George W. Shute.)

trustee was going to be as much my trustee as he was going to be a trustee of the creditor. That was my idea of it in the beginning. When the matter came up, I turned over all of my checks, all of my stubs, all of my bank statements, which reflected, I think, almost every transaction that had happened from 1924 on down. Probably even before that. I am not clear about the amounts. I did not even go over those stubs and statements to determine about these things. I handed them over in volume, so that they might just go for any examination. I had no fear at that time at all of what the result might be. I did not make any copies of them. They went in to the trustee or to the referee or wherever they went and were used after that for the purposes of these examinations and I knew that those bank-books and bank statements and checks would contain a key to everything that I had done from there going on down, with but few exceptions.

Q. And, those few exceptions, were you prepared to testify to them?

A. I testified to them as fully as I could.

Q. Had you made preparation for testifying to them—investigation of the facts?

A. I don't—in fact, there was no preparation to be made except to just remember about them, that is all. [506]

Q. Now, you speak of a key that will reflect everything in regard to these matters. Please explain just exactly what you mean by the key.

A. By that, I mean that where I am working, as I am working, and receiving dividends, as I do receive them, from Armstrong, Lewis & Kramer,

(Testimony of George W. Shute.)

where they are kept close track of all of the time and I have no other source of income—regular income, that if, in my bank deposits and my bank statements, there suddenly looms up an item of $295.00 or for $500.00, I know at once that that is an amount that is coming from some source that is not from Armstrong, Lewis & Kramer. I knew that when I handed over these books and records and papers. I knew that those things were in there. That is what I mean by a key.

Q. You made no record or statement up to guide your trustee in that matter?

A. The trustee was, apparently, kind enough never to ask me, notwithstanding the fact that I have volunteered time and time and time again to go over them with you, if you wanted me to do it.

Q. Yes. Now, you were given full opportunities in the courtroom to do that, were you not?

A. I was not.

Q. Now, Judge Shute, in regard to this savings account, you discovered, in your examinations subsequent to bankruptcy, that a good part of that account was made up from checks paid by you into that account of funds that you received from Armstrong, Lewis & Kramer, did you not?

A. Many of them were made up from that source.

Q. Can you tell us the approximate amount of those now? A. I cannot.

Q. You were asked about those particular checks at the examinations, were you not?

A. I don't remember. [507]

Q. You don't remember. You don't recall that

(Testimony of George W. Shute.)

you were asked and you could not trace the funds—checks payable to cash?

A. I don't remember that I was examined, except the most general way, about that. I do know that Mr. Ganz was examined about them and, from the bank records, checked them back, to show that they probably went in a certain place.

Q. Don't you remember that you were asked particularly about a check of January 4, 1927—28?

A. I haven't it in mind right now.

Q. Don't you recall that you were examined about quite a number of those checks?

A. I might have been, Mr. Nealon. If you have the testimony there—

Q. Pardon me. I had not finished my question. Don't you recall now that you were examined about quite a number of those checks and you could not give us the information about them; that they were drawn to cash and that this was prior to the examination of Sylvan Ganz?

A. That may be true. It would be rather hard for me to do, I know, in view of the fact that I had not checked back clean through the records and so on and to follow these things through to a determination of their ultimate source—of their ultimate destination.

Q. There was nothing on the check stubs furnished me or the checks themselves that would show that they were paid into that account, was there?

A. No, I think not. Many of them were paid by payments to the First National Bank—payments to cash. On the check, that is all that would reveal.

Q. Now, those amounts alone exceeded the

(Testimony of George W. Shute.)

amount that was on deposit in that savings account of Jessie M. Shute on April 17, 1928? [508]

A. Well, I can't answer that. The account will show that very clearly. I imagine that that would be true, though.

Q. There were two $500.00 checks, were there not?

A. Well, there may have been. I can't remember the checks.

Q. Now, we did procure that information or a part of it, in your presence, when Mr. Sylvan Ganz was on the stand, did we not?

A. You mean he testified to those things?

Q. Yes. A. Yes.

Q. He showed at what window these checks passed and, in that manner, identified them?

A. Yes.

Q. And, you afterwards, either personally or through Mr. Lewis, had that checked up and found that his testimony was correct in that regard, did you not? A. I think Mr. Lewis did it for me.

Q. Now, at that time, as soon as that was disclosed, and at that meeting, I notified you, did I not, that that, in my opinion, was community property?

A. Oh, you always claimed that it was, Mr. Nealon, at all times. There wasn't any doubt about it.

Q. There was never any doubt about it prior to that time?

A. It appears that the very first time that that was mentioned that your position was that it was community.

Q. That was at the end of that examination?

(Testimony of George W. Shute.)

A. I don't know whether it was at the end or beginning or the middle. That was always done. There never was any other position upon your part.

Q. Now, that developed at the meeting of June 15, did it not?

A. I don't remember the date of the meeting. I don't remember when Mr. Ganz was there.

Q. I will call your attention to the transcript, showing that [509] Mr. Sylvan Ganz was a witness at the meeting of June—

A. I knew it was and, if that is the date, that is satisfactory.

Q. That was the only meeting at which Mr. Ganz was present?

A. I only remember being present at one time when Mr. Ganz testified.

Q. Now, on this matter, I stated to you at that time, "Now, this savings account, I think it is all community property," and you replied, "None of it is community property." Do you recall that?

A. I don't recall it but, if that is what the record shows, why, that is true, I assume.

Q. Now, I will ask you this, if I did not say, "I think there is no question about it. We will make an issue of it"; and if you did not then say, "Well, I would like to tell the referee about that savings account, so he will understand it. I think you can readily see, from this examination, as well as from the accounts, that in the handling of money and the way I accommodate people, I am not a very good business man. Mrs. Shute long ago recognized that. When I came down here, I did not have a thing. I did not have even a decent suit of clothes

(Testimony of George W. Shute.)

and was in debt about $3,000.00 to one institution. She has always done her own work, except for a very short time, had had no one to help her at all. She began to insist upon setting aside a certain sum of money. I gave her money for the house and the rest I have used in expenses. Out of that money, she saved and extracted from me in various ways enough to get this account started. It was put in her name and the understanding between us was that it was her own and belonged to her exclusively. At one time, I took $100.00 to cover the overdraft. She did not know it for a while but, when she did, it made a row. Well, I put that back. She saved it in little amounts and, when payments came in from this house, sometimes I would use them and sometimes I would deposit them in her savings account." That is [510] the statement you made?

A. I think I remember that that is fairly accurate.

Q. Now, as a matter of fact, those savings were made up from some saved by her from your earnings since marriage, leaving aside all question of the Globe property, now, were they not—Globe residence, I mean?

A. Yes, that is, directly and indirectly, Mr. Nealon.

Q. Now, pardon me, I forgot that you mentioned the piano. You can make that exception.

A. There are exceptions of that kind like the piano and, I think, as I stated once before, that there was a little sale of one or two little blocks of

(Testimony of George W. Shute.)

stock that probably went into that account. I can't say.

Q. Were those stocks anything that she had before marriage to you?

A. No, they came after, just as the piano came after and the piano was community, as well as the little blocks of stock that she had sold.

Q. So the source of that entire account was community property, with the exception of what may have been placed in there from the Globe property, is that right? A. No.

Q. That is your contention of it, is it not?

A. Oh, no, I don't make that contention.

Q. Well, explain that. I want to get your version.

A. Well, as I explained heretofore, the savings account was started for the reason that I have explained and it was always Mrs. Shute's separate account, not mine.

Q. Oh, pardon me. I wanted to get at the source of it only. A. Yes.

Q. I want your contention.

A. Yes, I will very freely admit that, except for the rents, in [511] all probability, although I don't say this positively as to the little blocks of stock that were sold, the source of that savings account came originally from my own earnings after marriage.

Q. Now, you stated, I believe, that you had a consultation with Mr. Clifton Matthews about this savings account?

A. Yes, I talked to him at the time that I went to see him about representing Mrs. Shute.

(Testimony of George W. Shute.)

Q. When was that, Judge Shute?

A. Right away after this first meeting. Just when that date was, I don't know.

Q. You mean the meeting of May 1, 29, or June 15?

A. Well, Mr. Nealon, I can't say. Those dates are so closely correlated in my mind but it was right along about that time.

Q. It was after the time this statement just read into the record was made?

A. I can't say that, Mr. Nealon.

Q. Wasn't it at the meeting of May 29 that you first revealed that she has a little savings account or about a thousand dollars?

A. Oh, I think that I testified to that at the first meeting. At least, at the first time I was asked about it, I told about it—the first time that it came up.

Q. I call your attention to the next question, as it may refresh your memory. "Where is that?" And your answer, "In the First National Bank." Then, you go along, "She owns her personal savings and the house at Globe and a few things I have given here." Wasn't that the first time that the subject came up, May 29?

A. It may have been. Whatever the record shows. I can't say.

Q. Now, does that help you in any way to fix the time that you called on Mr. Matthews?

A. No, it does not. I know that it was done very soon after this first question relative to her rights was mentioned. As soon as I could conveniently do it, in other words. [512]

(Testimony of George W. Shute.)

Q. Can you fix it by the date of the withdrawal of $1,000.00 from that account subsequent to your bankruptcy? A. Only that it was before.

Q. It was before that date? A. Yes.

Q. Approximately how long before that date?

A. I can't state. Some days, at least, and probably some little time, because I had gone over to see Mr. Matthews or had seen him on one of my trips over there and had spoken to him and asked him if he could represent her, had gone over the matter with Mr. Matthews, had come back to Phoenix and had advised Mrs. Shute. After she had telephoned over to him and some week or ten days after that, may be more—these times are only approximate—not even approximate but indicative—she went over herself to see him and receive her instructions from him in person.

Q. That was after your consultation?

A. After my consultation.

Q. Now, when Mr. Matthews gave you the advice about this account, will you state briefly the facts that you put before him at that time?

A. Well, as I remember it—

Q. State them a little slowly, Judge, please, so that I can make a note of them.

A. As I went over it with Mr. Matthews, I think that I told Mr. Matthews about it about as I have stated it here; that part of this money had come in from the house; part of it had come in from little sales of stock and part of it had been given by me in pursuance of the understanding which we had had about the return to her of the property that had

(Testimony of George W. Shute.)

been used at Prescott. I think that is about, in a general way, the extent of it.

Q. Now, did you consult Mr. Matthews as your own lawyer? A. No, not at all. [513]

Q. Then, this advice or whatever opinion he gave was not for the purpose of guiding you in the bankruptcy affairs in any way, was it?

A. It would be rather difficult to separate advice coming to me for her benefit which naturally redounded or was against either one or the other possibility. That would be an impossibility. What he told me was told me because of my conversation with him and I took it for what it was worth. What he told her, when she went there, all I know is what she told me.

Q. Now, he was not your attorney at that time?

A. No, Mr. Matthews was not.

Q. Now, state, as briefly as you can and get your facts in, just what Mr. Matthews' advice was or opinion was in regard to this savings account.

A. Well, I think Mr. Matthews stated to me the first time, "There may be some little doubt about this savings account. However that may be, upon the statement you have given to me, there is no doubt but what every interest that you had in it passed to Mrs. Shute. Now, it may be that they will cite Mrs. Shute to show cause or something of the sort why this savings account should not be subjected to the action of the trustee and, when they do cite Mrs. Shute, I will be very glad to be there and make such representation for her as I think is proper and will protect her in any way that I think

(Testimony of George W. Shute.)

she ought to be protected." That is about the extent of it to me.

Q. I am only asking you for the opinion that Mr. Matthews gave you so far as the same affected yourself? A. Well—

Q. And your future conduct in the bankruptcy proceedings. Now, I would like to have that opinion. You have introduced this, Judge Shute, remember, not I.

A. I am not arguing the matter with you at all, sir. I am [514] stating as nearly as I can what the facts are.

Q. Well, give me the opinion.

A. I have told you about what he said.

Q. Well, give me the opinion.

A. That is about what he said to me.

Q. That was all of the opinion?

A. I think that is about what he said.

Q. Then, he did not advise you that that property did not pass to the trustee?

A. Why, it necessarily followed that it did not. It necessarily followed that it did not.

Q. Are you giving now Mr. Matthews' opinion or your own?

A. Well, I am mixing it a little. I don't know but, at least, that is the impression that I had and always did have, which coincided exactly with mine about it.

Q. Mr. Moore asked you, on the direct examination, if you made a statement of the facts to Mr. Matthews and got his opinion on it. As I under-

(Testimony of George W. Shute.)

stood that, that was to be introduced in evidence, showing that the action you had taken in the bankruptcy regarding that account subsequent to that time was based upon Mr. Matthews' advice to you. Was that a fact?

A. Why, no, I don't think that you have that right, Mr. Nealon, if I get your question right. As I told you, as soon as the question of Mrs. Shute's property came up and her legal rights under it arose, I immediately notified her that she ought to have separate counsel in the matter and, in pursuance of that conversation which I had with her, when I told her about it, nervous and excitable woman that she is, I told her or she asked me who I thought she ought to have, with the result—

Q. I don't care to go into that phase of it. I only want to go into it so far as it is pertinent to your defense that you acted upon the advice of Mr. Matthews in regard to withholding property [515] from the trustee.

A. I never have stated at no time that I ever acted upon the advice of Mr. Matthews. I simply said that Mr. Matthews' advice and talk with me convinced me that I was right about it and the subsequent conversation which he had with Mrs. Shute and her statement to me simply reaffirmed it, that is all.

Q. Now, you have stated all of the facts, then, that you put before Mr. Matthews in regard to the savings account?

(Testimony of George W. Shute.)

A. Oh, there may be other facts, Mr. Nealon. I can't remember just what that story was that I told him. I talked at quite at length to Mr. Matthews. I think that I was there from about 4:00 o'clock until after 5:00, which necessitated quite a conversation.

Q. Did you tell him that you were insolvent at all of the periods involved in that savings account?

A. We discussed that very feature of it. We went over that and talked about the amounts and so on.

Q. And did he tell you that the trustee had no interest in that account after that statement to him?

A. I think he stated to me just about as I have told you.

Q. Now, I don't mean that you told on direct examination. Go ahead with anything that you want to say. A. That is all I want to say.

Q. If I understood you correctly, in answer to the question that Mr. Moore put to you yesterday, in regard to the Essex car, you said that he told you that the gift was good as between you and your wife but that the trustee in bankruptcy might assert a title superior to hers in that?

A. No, he did not tell me that. I did not so testify.

Q. All right, now, just what did he tell you in regard to the savings account on that same subject?

A. He told me that before they could be touched at all that her [516] rights must be determined

(Testimony of George W. Shute.)

in it and that her rights could not be determined without a proper citation and without it being properly determined.

Q. Yes, we will agree that that is good advice. Now, what did he advise you in regard to your duty in scheduling that property?

A. I never consulted with Mr. Matthews about that.

Q. Then, he gave you no advice regarding the bankruptcy proceedings at all?

A. If he did, it was only incidental to the purpose of my visit to him. He recognized that I was represented by someone else and his whole duty was to Mrs. Shute and not to me.

Q. Can you tell how much you placed in Mrs. Shute's savings account between December, 1927, and April 17, 1928, from funds earned by you?

A. Not offhand, I cannot, Mr. Nealon.

Q. Can you from the statement of the bank?

A. If the bank account is here, why, of course, it will show the deposits, whatever they may be.

Q. Well, during that period, within four months prior to the filing of your schedules in bankruptcy, did you deposit any sums in the savings account of Jessie M. Shute? A. I believe there was, yes.

Q. Can you give the approximate amount?

A. No, I cannot offhand.

Q. Wasn't there one check, in January of 1928, of $500.00?

A. I really don't remember, Mr. Nealon. The

(Testimony of George W. Shute.)

savings account shows those deposits. We have them.

Q. Well, do you mean that all of those larger deposits, now, in that savings account were deposits made by you from your earnings?

A. I believe they were.

Q. Now, you gave a check to the A. E. England Motors Company of [517] $995.00 for V. L. Wentworth, did you not?

A. I believe the record so shows.

Q. That money, you claim, was repaid to you in certain sums, do you not?

A. It either was given to me before or after to make up the purchase price of this car.

Q. Can you now state to the Court what was done with this money after you received it?

A. Well, I probably retained it. In fact, that must have been what was done with it.

Q. And retained it in what form, Judge Shute?

A. I am sure I don't know. In whatever form that I might have retained it. There might have been a sum of money come in to me for the purpose of paying on that car and I did not pay it right at that time. I may have used a part of that money for incidental expenses and, then, later, when the amount was ready to be paid, it was paid in one lump sum by me.

Q. Now, that money does not appear in any of the bank statements, does it not—the money that you received, or does it?

(Testimony of George W. Shute.)

A. I do not believe that it does.

Q. Now, I will ask you to account to the Court at this time for that money. Make the best accounting you can of it now.

A. What do you mean by that?

Q. What became of the money?

A. Went to pay this $995.00.

Q. But that was paid from your personal checking account, Judge Shute.

A. It would be utterly impossible for me to account for just how that money was handled and how it was spread out. As it came in, the last amount was this $150.00 that was received for the little car. That was $150.00 of it. The other amounts were spread over three or four payments—maybe more. I don't remember [518] exactly what I did with that money, how it went. I could not say without, probably, an examination. It would be utterly impossible for me to account for it. I don't know.

Q. So your answer is that you cannot account for that money in any way, is that right?

A. Well, I won't say that. I assume that I could trace it around and find where the whole sum went. I am not prepared to say.

Q. I am calling your attention now to your examination of May 29 on that subject. I call your attention first to the question, "Then I notice check number 548 here, dated December 3, 1927, for $995.00. On what was that applied?" And your

(Testimony of George W. Shute.)

answer, "That calls for a little explanation. He, referring to Mr. England, has been throwing off a little percentage on the list price of cars to me. The Wentworths in Globe wanted a new car and, in talking to them, I told them about this percentage and they asked me if I could not get them the throw-off on the car they intended to purchase. I talked to England about it and he said he would do it for me. They bought a new Hudson car and Mrs. Wentworth gave me $400.00 and later $900.00, completing the total purchase price of the car."

A. I believe that is right.

Q. That is the way you explain it. Now, the next question. "Then, this $995.00, you received from the Wentworths. Yes. In other words, there is about $1300.00 cash payments that do not belong in my checks there at all. It was money they advanced to me to complete the transaction for the car." That is correct, is it not?

A. I believe I testified to that.

Q. "When was this car bought for Miss Wentworth? I think it was in December." That is correct? A. Yes.

Q. You were referring then to December of 1927? [519] A. Yes.

Q. Then, you were asked the question, "When did they give you the payment of $400.00?" And you answered, "A little before the $900.00 payment was made by me. The check will show the dates exactly." That is correct, is it? A. I think so.

(Testimony of George W. Shute.)

Q. Then, you were asked the question, "The check for $900.00 is dated December 3, 1927. A. The one before that was the last payment." That is correct, is it not?

A. That is correct, if you are reading from the record. I just don't get that exactly.

Mr. NEALON.—Will you give the original record to the witness, so that he can testify.

A. Just tell me that that is what it is. You don't need to waste any time on whether it is an original or a copy.

Q. That is a copy and I am reading from the record. A. I will take your word for that.

Q. Then, you were asked this question, "I don't find any $400.00 check to Me. England, that is, in the latter part of 1927. There was one on September 2 for $250.00 and one on November 25 and then one on December 3 for $995.00." And you answered, "Well, the two checks paid for the little Essex. I am not sure that the $400.00 was paid. I don't know whether I turned over the $400.00 check to them or whether I deposited it and then paid it. I am sure of the $900.00, because that amount came in cash. I deposited it in cash and checked it out." Now, I will ask you which is the correct statement, the one made at that time that you deposited it in cash and checked it out or the one you have made just now?

A. It is quite apparent that I did deposit it in cash, Mr. Nealon, and checked it out. It is quite

(Testimony of George W. Shute.)

apparent that the payments were made in cash to me that I never deposited.

Q. Now, where is it apparent from? What shows that they were [520] paid to you in cash?

A. Because they were made to England by me and the bank account does not show that I ever deposited them.

Mr. MOORE.—May it please the Court, are we going to review all of the testimony taken? As I understand it, he is directing his testimony to this $995.00, which he alleges is the amount the bankrupt paid during the month of December, 1927, to A. E. England by check on the First National Bank as payment on a car for one Virginia L. Wentworth. Now, let's stop there. There is no use to go any further. Just assume December, 1927, Judge Shute gave A. E. England $995.00 to apply on a car, which we will assume he wanted to give to Miss Wentworth. Now, what difference does it make? The money is gone. $995.00 is gone. Whether Miss Wentworth gave the $995.00, it makes no difference if he paid it from his own funds and presented this car to Miss Wentworth in December, 1927, as a present.

Mr. NEALON.—There is no allegation in regard to that.

Mr. MOORE.—Can you say he has concealed that?

Mr. NEALON.—There is no allegation in regard to that.

The COURT.—What he is charged with is concealing.

Mr. NEALON.—The money that he received from her, not the money that he paid.

Mr. MOORE.—Now, wait a minute.

The COURT.—At what time?

Miss BIRDSALL.—December, 1927.

The COURT.—When was the petition filed?

Mr. NEALON.—April, 1928. We are asking for an accounting for that $995.00 that he got from Miss Wentworth.

Mr. MOORE.—That is not an accounting.

Mr. NEALON.—Disposition of the other money that he has testified to that he paid to England for the car. Now, we want an accounting of the money that he got from Miss Wentworth. [521]

Mr. MOORE.—Now, wait a minute. Now, then, this reads: "995.00 being the amount which said bankrupt paid during the month of December, 1927, to A. E. England by check on the First National Bank of Arizona, signed by G. W. Shute, bankrupt, as a payment on a car for one Virginia L. Wentworth, of Globe, Arizona, which payment said bankrupt testified under oath, at the first meeting of his creditors, on the 29th day of May, 1928, was made by him for said Virginia L. Wentworth in December, 1927, out of monies paid to him by said Virginia L. Wentworth, but which money so paid to him by said Virginia L. Wentworth did not appear in any statement or data furnished to said trustee by the bankrupt and has never been accounted for."

(Testimony of George W. Shute.)

Why, the allegation answers itself, your Honor. They are asking him to account for $995.00 that he paid England as a payment on a car, which $995.00 was made up by funds paid to him by Miss Wentworth.

The COURT.—What their position is is that the money paid by Wentworth was not put into the banking account and no accounting made for it and that this car was paid for out of the funds of the bankrupt by a check on the bank.

Mr. NEALON.—Yes. The questioning was done under another assignment in here, wherein we directly allege, "but which money so paid by said Virginia L. Wentworth did not appear in any—" Practically the same thing.

The COURT.—The witness has stated that this money was paid to him in cash and that it went in the usual course of business in the payment of bills. Now, why pursue that further?

Mr. NEALON.—But he has stated, in a previous examination, a different disposition of the money.

The COURT.—Well, he tells us that that must have been incorrect.

Mr. NEALON.—We just want to test out which is the truth.

The COURT.—You are taking too much time. We can spend the whole day, perhaps, trying to trace that $900.00 that was paid to [522] him and in ascertaining what disposition he made of it.

Mr. NEALON.—This was the first admission,

(Testimony of George W. Shute.)

prior to the filing of these specifications, that the money did not go into the bank.

The COURT.—If you intend to pursue this examination as you have been doing and then take up those separate specifications, why, the Lord help us, I don't know when we will get through.

Mr. NEALON.—I don't want to work any more than anyone else that is in here.

The COURT.—In other words, I don't want the examination to overlap.

Mr. NEALON.—Nor do I wish it to, if your Honor please. If I do so, it will be inadvertent, I assure you. There will be some cases where in necessity they will overlap to some extent.

The COURT.—Then, I may shorten it.

Mr. NEALON.—Q. You heretofore explained that this $995.00 went into the $1900.00 deposit, which you have since explained is the $2,000.00 check from Goswick less $100.00? Is that true?

A. That is one of the things that I explained to you yesterday. That is true.

Q. I did not examine you yesterday, Judge, did I?

A. Well, I should not have said to you. Pardon me. That, I explained yesterday.

Q. That was a volunteer statement on your part about that $995.00 having gone into that account? You were explaining that deposit at the time, I mean?

A. I was trying to make it up without having examined any of the data or without having examined any of the checks or any of the things that

(Testimony of George W. Shute.)

should have shown about where it was and where it went and so on.

Q. Now, in regard to the Essex car, I assume the same statement was made to Mr. Matthews in regard to that car as was made about the other property or was it different in a way? It must [523] have been different to some extent. Explain the difference.

A. Well, I don't know just what you mean by that. I had rather have you ask me.

Q. You explained to him that it was a gift?

A. Yes, I did.

Q. And you explained to him that you were insolvent at the time the gift was made?

A. I so stated.

Q. Well, I am asking you to state it to me in this examination—state it to the Court, rather. Now, what opinion did he give you as to the car then?

A. The same opinion covered it all. Same statements to me covered it all.

Q. It was that the gift was good as between you and your wife? A. Yes.

Q. Did he state that it was not good as between you and a creditor that had a debt existing at the time the gift was made?

A. He did not. He, as I stated, always said that her rights and whatever showing that she might have to make relative to her rights or her interest in that property could not be determined without a hearing and that she must necessarily be made a party before it could be finally covered, because—

(Testimony of George W. Shute.)

Q. And that was a defense for her?

A. Interposing any defense that she had to any question that might arise relative to that property.

Q. Did he tell you that the property in that car, the gift being void, passed to the trustee in bankruptcy by operation of law on the filing of your schedules?

A. He never said that it was void. He never said that it passed to the trustee.

Q. Was that matter taken up with him?

A. It may have arisen incidentally during the course of the [524] conversation.

Q. In any event, you were not relying on any advice that you got from him in regard to your bankruptcy proceedings; is that right?

The COURT.—Well, he has answered that, now, just as fully as it is possible, it seems to me. He said he could not separate the advice that he gave with reference to what Mrs. Shute claims from his own conduct in the proceedings—he could not tell to what extent he was influenced one way or another. It seems to me there is no use of repeating it.

Mr. NEALON.—Q. This phonograph that has been the subject of questioning here, you bought that from Berryhill, did you not?

A. Yes.

Q. Conditional sales contract? A. No.

Q. Straight account? A. Open account.

Q. How much was due on it at the date of bankruptcy, if you know?

(Testimony of George W. Shute.)

A. I am not sure but it seems to me it was fifty or a hundred dollars but I am not—

Q. The purchase price of the automobile was how much—of the phonograph?

A. I am not sure whether it was $365.00 or $385.00. I checked it up after this examination to find out and even now I have forgotten whether it was 365 or 385.

Q. You are living at the same place that you lived at, are you? A. At what time?

Q. At the time that you filed your petition in bankruptcy. A. Yes.

Q. That is on Lynwood Street?

A. 66 West Lynwood. [525]

Q. It has been your home at all times since that time? A. Yes.

Q. That is entirely omitted from your schedules?

A. Yes.

Q. Judge Shute, on December 27, 1928, you testified to a receipt of some money from C. C. Julian that you had not previously said anything about; is that true? A. You mean the story of the—

Q. Yes, of the C. C. Julian.

A. —of the source?

Q. And the $10,000.00. Source of that, yes.

A. Yes.

Q. Now, Judge, you had never before testified to any receipt of any money from Julian?

A. I had not been asked any source.

Q. You had been asked, however, if you had received any money from any other source other

(Testimony of George W. Shute.)

than the firm and you had answered, no, didn't you?

A. There was an examination of that sort, yes.

Q. How would we have known, from any schedules or anything or any documents of any kind that you had turned over, that you had received this money from Julian?

A. By the very simple expedition of checking up on the checks that were there, which would have shown this deposit without any source in the world and have asked me about it and the whole story would have been told to you instantly.

Q. In other words, the only way would be by word of mouth; is that the idea?

A. Yes, that is the only way I could have told you the story about the source of it or only way that it could have come—the only record that could have been made of it.

Q. Now, you only deposited $3400.00; is that correct? [526]

A. I think, as it has been worked out, the records will show that $3400.00 of that was deposited in my own checking account—$1500.00 in the savings—$500 in the savings account. That makes $3900.00.

Q. Now, you received this money, the sum of $10,000.00, in currency, when you received it?

A. It was paid to me in cash, yes.

Q. Now, you say that you paid Joe Bandauer $5,000.00 out of that ten?

A. It was split right in two with him at that time.

(Testimony of George W. Shute.)

Q. Then, you did not deposit the balance in the bank at that time, did you?

A. You mean the rest of it?

Q. Yes. A. No, I did not.

Q. Then, will you explain how, from any bank account, we could have ascertained the source of that? You haven't anything in the bank account itself that would show that, have you?

A. The source of it—where it came from?

Q. Yes.

A. No, the story would not possibly be in any book of record or anything else. Now, you have asked me why in a way— You have insinuated that the difference between the $3400.00 that shows in the bank-books and the rest of it—where it went to—I have concealed it. Do you want to know where it went?

Q. You have already testified and I am not questioning that at all.

A. I would be very glad to tell you.

Mr. MOORE.—Tell your story, Judge Shute, that you have on your mind.

A. Let him ask me and I will tell him where it went, if he wants it and, if he does not, it is all right. [527]

The COURT.—Well, I should like to know, myself.

A. Right at this time and for some time preceding that, my father was in a very low condition. He had had some business reverses, which I always will think were the means of his finally being put

(Testimony of George W. Shute.)

down. They needed the money. I went over there and I gave my mother $1,000.00 of that money, in cash. I didn't take any check or anything else. It came in right then and right out. I went over and gave it to my mother and my father to help them out of their difficulties. In the time succeeding that, during a stated interval of some month or six weeks preceding his death and the death, in the two little things, I used a considerable amount of money for them, in an effort to help them out in that situation. That is what went with the balance of that money and more, too.

Mr. NEALON.—Q. Now, Judge Shute, you testified at the first meeting of creditors that you had made no payments, except by the work you have done for him. You were referring to Mr. England and the Hudson car, were you not?

A. I don't remember just how that came up.

Q. And, the answer, you have had read to you. "That is about the way it would figure out. I don't think I made any cash payments at all."

A. That is about the way I testified at that time.

Q. Now, when you received a check for $5,850.00 from Armstrong, Lewis & Kramer about June of 1927, you did not deposit that check in the bank, did you? A. No.

Q. You took, in place thereof, two cashier's checks, did you not?

A. I took either one or more cashier's checks. I don't remember whether it was one or two.

(Testimony of George W. Shute.)

Q. Well, perhaps I can refresh your memory by other questions. [528] One of those checks was for $2,000.00 and you deposited it or paid it—I am not binding you down to which—with the A. E. England Motors Company shortly after you received the same?

A. I think it was cashed there; yes.

Q. Cashed there?

A. Cashed there. That is, I mean by that I turned it in at that time. It went through the A. E. England Motor people and then back to the bank. I think that is the way that was done.

Q. As a matter of fact, it was paid on your account, was it not?

A. I paid an account there at that time and I paid in on this account and then they gave me their check back for the difference between the two, if I remember it correctly.

Q. That was a check for some seven hundred and odd dollars? A. I believe so.

Q. And you deposited three hundred and some odd dollars of the check you received back with the bank?

A. I don't remember the exact amount of the deposits. The account will show that.

Q. Four hundred odd dollars?

A. Whatever it was.

Q. Now, you received another check for twenty-nine hundred and some odd dollars—a cashier's check, in exchange for the $5,850.00, did you not?

A. I don't remember the amount.

(Testimony of George W. Shute.)

Q. Something about that amount?

A. I don't remember the amounts. Whatever they are.

Q. The balance between the amount you received and $2,000.00?

A. Whatever they were. I don't remember the amounts.

Q. Now, you did not deposit that cashier's check for a considerable length of time in your own bank account, did you?

A. It was some time after. I don't remember. A period of time— What the days were, I don't know. It was not very long. [529]

Q. Will you make an explanation of why you did not deposit that in the account?

A. Very gladly.

Q. State it, please.

A. As I stated—well, I didn't state, but, as you know from the previous examinations, I had told you of coming down here with a debt of some $3,000.00—approximately $3,000.00 that I owed to the First National Bank of Globe, which later went into the Old Dominion Bank. There was some little dispute over the interest items that had come up, which had been discussed just at this time, at a time when I was settling what we call the Armour estate in the courts at Globe and, in the final settlement of it, Mr. Wilson and myself began to discuss the note at the bank, so, when the big payment came in, instead of depositing the money in cash, I took the money in the form of a cashier's check,

(Testimony of George W. Shute.)

so that it would not appear in the account, pending the settlement which I had with the Old Dominion, which was made thereafter and then the amount that I owed the Old Dominion as we settled it came out of that check.

Q. And, if I remember correctly your testimony at that time, you stated that you kept this money out so that they would not know that you had that and it might interfere with your settlement with them?

A. I don't think I stated it in just that way. In fact, I did not. What I stated was that I did not deposit it in the bank where it would be subject to some legal attack, which would not be a very pleasant thing.

Q. Now, you state the amount as about $3,000.00 that you owed that bank. As a matter of fact, there was one item of $3,000.00 and another item that ran the total in excess of $4,000.00 or $4200.00, was there not?

A. That amount seems out of reason. I don't think that is right. [530]

Q. Well, one of those settlements, you had another party on the note with you, did you not?

A. I don't remember, Mr. Nealon.

Q. Wasn't your brother liable on that note along with you? A. I believe there was.

Q. Now, that amount was $3,000.00 and settled for $1500.00, was it not?

A. No, $2300.00, I think. Well, now, maybe there was a settlement on that note of $1500.00. I

(Testimony of George W. Shute.)

don't remember but that is what the final arrangement was.

Q. The other amount was originally $1400.00 and there had been fifteen years accumulated interest on it, making a considerable sum?

A. I don't remember but I do know that the most of the two payments were interest amounts—not principal but interest amounts, involving transactions that myself and my brother had that had run through many years and it was to take up overdrafts and things of that sort that had made up the original amount and then the interest accumulations ran them up to whatever they were at that time.

Q. That amount was settled for $700.00, was it not?

A. I don't remember whether there was any separation or just what it was or whether they made the division after we agreed that it could be settled on a basis, I think, of twenty-one or twenty-three hundred dollars—whatever it was. I do not know that when it was finally arranged that I did not have enough to pay it and I gave them two postdated checks to make up the difference.

Q. I will call your attention to the testimony given by yourself, in answer to questions by Mr. Lewis. "The main part of the indebtedness was interest and he had agreed he would settle on the basis of something between twenty-one hundred and twenty-three hundred dollars. This so-called Beardsley fee came in about that [531] time and

(Testimony of George W. Shute.)

I did not want to deposit it, as the bank would learn of it and then there I would be without any settlement, so I took a cashier's check for it, so it would not appear through the bank."

A. I think I testified to that.

Q. That is the way you testified. Then, "Did you have more than this cashier's check you turned over to England? The account will show that. As soon as I made the arrangement with the bank, I sent the bank a check for $2,000.00. I lacked $200.00 of making the amount and sent them the postdated checks of $100.00 each to make up the difference." That is correct, is it not? A. Yes.

Q. Now, you were keeping this money out of the bank, in order that you might make a compromise of your indebtedness to the Old Dominion Bank without their knowing of your receipt of this money of money; was that it?

A. No, I won't say that.

Q. Well, just explain it your own way.

A. I have explained it as fully as I think is necessary, unless the Court advises me to make some other explanation of it. The matter of the amount that was due the bank would take a long time to explain how those matters arose in connection with my brother and the settlement of it would take a long time that I don't believe are material.

Q. In regard to that Hudson car for a moment; that was in the basement of the A. E. England Motors Company for a considerable period of time, was it not? A. Yes.

(Testimony of George W. Shute.)

Q. I don't know whether I asked you this question before or not. You refused to give me an order for that car when I demanded it, did you not?

A. I believe I did at one time.

Q. But stated you would purchase the car at the blue book price? [532]

A. Well, that was made after; after we had gotten down to the point where I wanted to get the matter straightened up and settled up and get the matter behind me; then, I agreed with you that I would pay you the blue book price for it, which was considerably more than the car was worth.

Q. And you did pay that?

A. I did pay that.

Q. When you were asked at the meeting of creditors why you did not schedule it, referring to the Hudson car, you stated that you turned it back; that is correct, is it? A. Yes.

Q. You made that statement? A. I did.

Q. And then you afterwards stated that you had an interest of several hundred dollars in the car, did you?

A. I don't remember just how that arose or just what the testimony was on that point.

Q. Now, Judge Shute, after you paid this $2,000.00 in to England in June, 1927, and received back some seven hundred odd dollars from him, you had paid everything that you owed him up to that time, had you not? A. In June, 1927?

Q. Yes.

A. I don't know, Mr. Nealon. I could not tell

(Testimony of George W. Shute.)

without looking at the books and I looked at that ledger sheet and I could not understand the ledger sheet. I don't know. Whatever the books show, they show.

Q. Why was the return made to you of the money, then, the $700.00?

A. I imagine that that was what was done. I imagine that that squared me up at that date, if it is as Mr. Wedepohl told me, whatever it was. I don't know. I never looked at the books. I [533] never questioned them.

Q. On the Hudson car prior to that time—it squared up everything on the Hudson car that you owed prior to that time?

A. I assume that when I went there and asked Mr. Wedepohl what the amount of my balance was that he told me; that I gave them this check and paid that amount and went off and never knew what those books showed at that time.

Q. But you knew that you had paid up in full?

A. I think that that would necessarily follow.

Q. Then, in August, you bought the Essex car?

A. I believe, in August, the Essex exchange was made.

Q. And there was only a small balance due on that? A. What do you mean?

Q. The old car covered most of the purchase price of the Essex car?

A. No. I think that the old car, as I remember, and I think this comes from the ledger sheet, because I never asked Mr. England about it. He has

(Testimony of George W. Shute.)

always said, "Whenever these cars are traded in or turned in, we will get for you just as high a price as we can and credit that amount," but my recollection of it is that there was about $300.00—$350.00—along there somewhere, which was the amount of the sale of the old Essex that had gone to Mrs. Shute in 1925.

Q. Now, let me call your attention to the fact that after you had paid up in full to England in June of 1927, he subsequently, during your absence in October, sold your car; that is true, is it not? A. Yes.

Q. Now, the money derived from the sale of that car and $250.00 paid by you paid for the new car in full and was so credited on the books of England, was it not?

A. I don't so understand it. [534]

Q. If the books show this payment made at that time, you will say they were correct, will you not?

A. Whatever the books show relative to payments and things of that sort is whatever they show. I don't dispute the books at all.

Q. You made a payment on November 25 of $250.00 to the A. E. England Motor Company?

A. I made, I remember, from the examination and from what has transpired, that I made two $250.00 payments and I am quite sure that both of those two $250.00 payments were made on the Essex car for the express purpose of getting it clear, so that there would be no liens on it or strings on it so far as Mrs. Shute was concerned.

(Testimony of George W. Shute.)

Q. But, I want to call your attention to the fact that you did on November 25 make a payment of $250.00 to England.

A. If the books so show, I certainly made it.

Q. The check is in evidence, Judge Shute.

A. That is all right.

Q. Then, the price charged you for that car was $1535.00, was it not, the Hudson car—the last Hudson car, the one that there has been so much talk about? A. That is what the books show.

Q. That is what the books show? A. Yes.

Q. And that is the price of the car, with the dealer's commission off?

A. That is the way I understand it.

Q. You made your arrangements with Mr. England that you were entitled to that discount?

A. No.

Q. Haven't you so testified and hasn't he so testified? A. No. You say he so testified?

Q. Yes, in your presence. [535]

A. I am sure I don't remember any such testimony. I have not testified to that at no time.

Q. You did get the dealer's throw-off or commission?

A. Ultimately, that is what happened, all of it.

Q. And that actually shows in the account there that the car was paid in full by the time you paid that November 25 check of $250.00, whether it was paid on that car or somewhere else?

A. I am sure I don't know what the books show

(Testimony of George W. Shute.)

as to whether or not those are payments. Whatever the account shows, that is what it shows.

Q. You have examined the account?

A. Yes, I have. In fact, I had a copy of it struck off the other day for counsel's use.

Q. And you examined that? A. Yes, I did.

Q. I call your attention to the credit on that account of October 6 of $1185.00, of October 7 $100.00 and of November 26 $250.00. Those are the entries as they appear there?

A. Whatever they show, Mr. Nealon.

Q. Well, look at that, please.

A. You have read them.

Q. Now, on the opposite side of this ledger account of the A. E. England Motor Company appears the charge of November 30 for the Hudson sedan, serial No. 799342, Motor No. 495579, and the charge is $1535.00?

A. If that is what they show, that is what it is.

Q. Now, those three items of $1185, $100.00 and $250.00 paid October 6 and 7 and November 26, exactly make up the sum of $1535.00, do they not?

A. I don't know. I never added them up.

Q. Will you kindly add them up.

A. Is that what they make? [536]

Q. Yes.

A. I will not take the time. I will take your word for it.

Q. Now, that is the last car transaction with England prior to the bankruptcy proceedings? The only reason I call your attention is this car, what-

(Testimony of George W. Shute.)

ever the motor, that appears subsequent to that time and with which we have no concern. A. Yes.

Mr. NEALON.—If your Honor please, you seemed to be laboring under a misapprehension the other day when you spoke about this car account. I would like for you to examine it.

The COURT.—I have since thoroughly.

Mr. NEALON.—Q. That $250.00 payment was the same day that the conditional sales contract was made, is it not?

A. I don't know.

Q. Judge Shute, in regard to the Globe homestead property, you testified before the referee, did you not, that from one to two thousand dollars of the consideration paid therefor was paid out of your community funds—your earnings since marriage; that is correct is it not?

A. One to two thousand?

Q. From one to two thousand—somewhere between one and two thousand dollars.

A. I don't remember, Mr. Nealon, just what I testified to about that.

Q. If the record so shows, that would be correct?

A. If the record shows, it shows.

Q. Now, that was an actual fact, was it not?

A. It was what?

Q. That was an actual fact that you did pay from one to two thousand dollars?

A. I think more than that. I think more than that, Mr. Nealon.

(Testimony of George W. Shute.)

Q. Now, at the time you purchased that place, you gave this [537] mortgage of $3,000.00 to Mrs. Holmes and the balance of the consideration amounted to $3500.00, making a total of $6500.00, did you not? A. No, I think the opposite.

Q. The mortgage was $3500.00? Pardon me.

A. Yes.

Q. And the cash $3,000.00? A. Yes.

Q. Now, since that time, you have paid from your earnings the sum of $3,000.00 to Mary E. Holmes upon that mortgage, have you not?

A. Since what time?

Q. Since the time that you purchased that property.

A. Yes, outside of the amounts that came from the rent from the property itself.

Q. You paid $3,000.00 on the principal during the year 1926?

A. Yes, I think that it all came from—with the exception I told you, it all came from my personal earnings.

Q. Now, can you tell how much altogether you paid on the mortgage, with interest?

A. No, I can't tell exactly.

Q. Including the interest. A. I can't tell.

Q. Something like $4600.00, isn't it?

A. I don't know.

Q. These other sums were paid from your earnings as well, were they not?

A. What other sums?

(Testimony of George W. Shute.)

Q. These other sums that you paid on that mortgage? A. I have just told you.

Q. Interest and taxes, etc.

A. Well, you mean interest and tax payments? [538]

Q. Yes.

A. I think many of those came from the rent on the property, although I may have paid out of my own earnings a part of them.

Q. The taxes paid on that property, as shown in your 1927 income taxes, were paid from your earnings, were they not?

A. I am not sure, Mr. Nealon. I don't know. I could not answer that.

Q. You recall that your receipts to the payments of taxes thereon was rendered by you as a community property report in your income tax for 1927?

A. Those reports show just exactly what the situation was with respect to the income tax, Mr. Nealon.

Q. Haven't you examined it since the testimony in the court about the— A. When?

Q. Yesterday. A. No.

Q. Did you examine it before Mrs. Parry testified? A. Yes.

Q. Well, aren't the facts just as I have stated them; that they appear as community property receipts and expenses in that report?

A. The reports will show just what it was, Mr.

(Testimony of George W. Shute.)

Nealon, without any question at all—just what the situation was.

Q. Can't you remember that, so we can save a little time in here?

A. I am trying to save time. That is the reason I answer as I do.

Q. Now, they so appear also in your 1926 report, do they not?

A. If it does, that is what was done.

Q. And they show also in the reports for Mrs. Shute for those two years—income tax reports? Now, Judge Shute, you recognize that the story of the consideration for the property and the [539] acquiring thereof as you told to-day differs somewhat from your testimony before the referee in regard thereto, do you not? A. I don't think so.

The COURT.—What property have you reference to now, the real property?

Mr. NEALON.—The real property, yes, if your Honor please.

A. If there is any material difference, I don't know just what it is. I tried to be as honest about it and as fair about it as I could.

Q. Now, you did not heretofore testify that the title to the Prescott property was in your name, did you? A. I think I did.

Q. On previous examinations?

A. I think I did.

Q. When?

A. I think when I was first asked about it. If I did not, why, it was simply an oversight, because

(Testimony of George W. Shute.)

that was the fact. That was exactly what took place and I am quite sure that I did testify to that effect.

Q. Now, that Prescott property was sold to whom? A. To Johnnie Robinson.

Q. And the consideration was how much?

A. I think, as I told you, I am very uncertain about that consideration. Mrs. Shute and I have both talked it over and I have tried to look back to see if I had anything which would indicate what was paid for that property and I have nothing, but our recollection is that we got $1500.00 for the little piece across the street and $3,000.00 for the property at the corner of Mount Vernon and Gurley. That is only as we remember it. This transaction took place in 1916.

Q. That is the sale to Robinson?

A. Yes, I think it was 1916. [540]

Q. There were two pieces of property?

A. Two pieces.

Q. And the title to each of them was in your name?

A. Both were, under this deed that came from Mrs. Cullumber in 1910, at the time of her death.

Q. Now, the consideration for that property, when you purchased it, was what or was it a purchase or was it a deed for love and affection.

A. Neither one.

Q. All right. State.

A. I have related it just as fully as I could on my

(Testimony of George W. Shute.)

direct examination just what took place and how it happened.

Q. The consideration for that deed was a community consideration, was it not?

A. There was no consideration for it at all. It should not have been made that way and was a pure error that was brought about, apparently, by some misunderstanding between Aunt Mary and Charlie Herndon, who made the deed, and we never changed it after it was *did* and did not attempt to.

Q. You made no conveyance to Mrs.—

A. No, I made no conveyance.

Q. During any of that period?

A. I just left it as it was. We immediately began to try to dispose of the property, because, as we knew, it was not profitable to have it up there where we could not take care of it.

Q. Did any community consideration go into it at all?

A. No, no community consideration. It was made for the purpose, as I told you, to save that situation, going to her.

Q. What was her condition at that time?

A. Mrs. Cullumber was expected to die from day to day, from the time that I arrived there until her death took place. Mrs. Shute remained until the end. I was district attorney at that time and [541] I returned to Globe and stayed, I think, one day—maybe two days and then I returned to Globe, where we were living.

Q. I show you what purports to be a certified

(Testimony of George W. Shute.)

copy of a deed from Mary B. Cullumber to you—quitclaim deed and ask you if that is one of the tracts to which you have reference?

A. Yes, that is one of them.

Mr. NEALON.—It is offered in evidence, if your Honor please, without objection.

Q. Was this a portion of the property which was sold to Mr. Robinson? A. He bought both pieces.

Q. I show you what purports to be a warranty deed from Mary B. Cullumber to you and ask you if that is—

A. This appears to be the other one covered.

Whereupon Creditor's Exhibits Nos. 27 and 28 were admitted in evidence without objection, as follows: [542]

Creditor's Exhibit No. 27 consists of a quitclaim deed dated October 18, 1909, between Mary B. Cullumber of the City of Prescott, County of Yavapai, Territory of Arizona, party of the first part, and G. W. Shute of the County of Gila and Territory of Arizona, party of the second part, consideration $10.00. The deed is the usual form of quitclaim of property described as follows: All and singular the following described land, property [543] and premises, situate, lying and being in East Prescott, in the aforesaid County of Yavapai, viz.: Commencing at a point being the southwest intersection of Gurley and Mount Vernon Streets, in said East Prescott, and running from said point south along said Mount Vernon Street on the west side to a point one hundred and fifty feet; thence west fifty

feet; thence north one hundred and fifty feet; thence east fifty feet to the point of beginning. It contains the following clause: It is expressly provided however that the said Mary B. Cullumber, party of the first part, is to have and receive any and all rents and other income from said property during her lifetime, or until the said property shall be sooner disposed of by the said G. W. Shute. It is signed by Mrs. M. B. Cullumber and acknowledged by Mrs. Mary B. Cullumber before Allen Hill, notary public, Yavapai County, Arizona, on October 18, 1909.

Creditor's Exhibit No. 28 consists of a warranty deed from Mary B. Cullumber to G. W. Shute for a consideration of $10.00 on the following described property: All and singular Town Lot number twelve (12) in block number seven (7) situate, lying and being in East Prescott in the County of Yavapai in the Territory of Arizona, according to the survey and plat of said East Prescott, on file and recorded in the office of the County Recorder of said County of Yavapai, and the said lot being so marked, bounded, described, numbered and delineated on said map of East Prescott. The said lot being fifty feet front by one hundred and fifty feet deep. The deed contains the following provision: It is expressly provided, however, that the said Mary B. Cullumber is to have and receive any and all rents and other income from said property during her lifetime, or until the said property shall be sooner disposed of to other parties by the said

(Testimony of George W. Shute.)

G. W. Shute. The deed is dated October 18, 1909, signed Mrs. Mary B. Cullumber and is acknowledged by Mrs. Mary B. Cullumber on the same date before Allen Hill, notary public, Yavapai County, Arizona. [544]

Mr. NEALON.—Q. Subsequent to the acquirement of this property in Prescott, you had a lawsuit over it, did you not, Judge Shute?

A. No, I don't believe—

Q. That some heirs of Mrs.—

A. There was some question came up about it with a fellow by the name of Stephens, who was, I think, a nephew of Mrs. Cullumber. He raised some question about it and there was some little disturbance over it that did not amount to much and the extent of which has completely slipped my mind. That, however, amounted to nothing, as I remember it.

The COURT.—Q. You mean to say that you gave no consideration?

A. None at all, your Honor.

Mr. NEALON.—That was a suit of William Stephens, as the administrator of the estate of Mary B. Cullumber, deceased, versus yourself, filed in Yavapai County, No. 5431, was it not?

A. Whatever that record shows.

Q. Look at it, please.

A. This is the record, is it?

Q. Yes, you can see that they are original papers.

A. Yes, I believe that is the situation. May I look at the date of it, Mr. Nealon? I am rather

(Testimony of George W. Shute.)

curious. I would have sworn it was almost immediately after Aunt Mary's death.

Q. The record would indicate about ten days afterwards? A. Yes.

The COURT.—What is the purpose of the document? [545]

Mr. NEALON.—I want first to identify his signature to it, call his attention to it and inquire about it.

The COURT.—Very well.

Mr. NEALON.—Q. Judge Shute, you will notice that this is a sworn answer filed in this case by you and duly signed by you?

A. That is my signature.

Mr. MOORE.—Well, I suggest, if you are going to question the witness about it, you had better identify it so that we will know what your questions are directed to. I don't want to read it until you offer it in evidence.

Mr. NEALON.—I think I have a right to examine from an instrument before it is put in the record after it has been identified by the signature of the witness.

Mr. MOORE.—You may examine in regard to it.

The COURT.—Oh, well, don't stop to argue that now. Go ahead and ask your questions. If I think it is admissible and you don't introduce it, why (several words not audible) whatever is necessary to give the court the desired information. I can't stop for you to go over it any further. You must have had plenty of time to go over that document

(Testimony of George W. Shute.)

and I can't wait. You are losing time. Ask your questions and let us get along.

Mr. NEALON.—In this answer, Judge Shute, you set up a community consideration for this property, did you not? [546]

A. I haven't read it. It has been a long time ago. There wasn't any consideration for it. The transaction took place exactly as I related it, as near as I can remember it.

Q. Didn't you set up as a defense in this case that there was an agreement—an understanding between you and the defendant that you would support her for the rest of her life?

A. Is that in the answer?

Q. I was trying to find it.

A. I think I could explain that very easily, if it is in there.

Q. I call your attention to paragraph II thereof. "That for many years prior to the death of said Mary B. Cullumber, said Jessie M. Shute resided with her in the city of Prescott and the said Mary B. Cullumber was almost entirely without means for her support. That said Jessie M. Shute secured employment in various capacities and for three years was a teacher in the Normal School at Tempe, Arizona, where she resided with the said Mary B. Cullumber and the two children, Arthur and Adah Small, and as this defendant is informed and believes, gave to said Mary B. Cullumber her entire earnings for her support, which earnings were put back into the Prescott property described in said

(Testimony of George W. Shute.)

complaint, after the deduction of their living expenses. That this continued until the marriage of said Jessie M. Shute to the defendant several years ago. That shortly after said marriage the said Mary B. Cullumber came to the town of Globe, the residence of this defendant and his wife, and resided with them several months and then returned to her home in [547] Prescott, and shortly after this the said Mary B. Cullumber began writing defendant and his wife, telling how hard it was to make both ends meet, that her property in Prescott, being the same described in the complaint, rent*ly* poorly, and that the expenses, taxes, assessments and other matters in connection with said property kept her in such financial condition that she had very little to live upon. That this defendant and his wife continued from time to time to send to said Mary B. Cullumber sums of money for her support and clothing, and that this continued on down to the summer preceding the death of said Mary B. Cullumber, and that during said last-mentioned summer defendant and his wife sent to said Mary B. Cullumber fifty dollars to pay her way to Los Angeles, where she met the wife of this defendant and was supported by her while she remained in Los Angeles. That at that time, in Ocean Park, California, said Mary B. Cullumber stated that she could not manage to keep her property expenses up; that the city was demanding the installing of a sidewalk which she was unable to have done, and she then requested the wife of this defendant to take

(Testimony of George W. Shute.)
the property and put in this sidewalk and assume the management and ownership of this said property. That the said Mary B. Cullumber then returned to Prescott, and shortly thereafter defendant and his wife were advised that the said Mary B. Cullumber was in a low state of health, and that said defendant and his wife immediately left for Prescott and found the said Mary B. Cullumber at the Mercy Hospital in Prescott; that on the day after their arrival in Prescott, the said Mary B. Cullumber repeated to this defendant what she had stated to his wife the [548] previous summer, to wit: that in her old age she could do nothing with the property; that she was unable, and had been unable the whole preceding summer to do her ordinary household duties, and stated that it was her desire to stay with the defendant and her niece, the wife of said defendant, and her said nephew, Walter Smith, as she chose, and that she would deed to this defendant her property in Prescott, being the same property described in the complaint herein, if he would attend to the construction of said sidewalk in front of said property, and she be given a home as above set forth; and that in this way she could compensate the defendant and his wife for moneys which they had paid to her, off and on, during several years prior thereto for her support and benefit, and at this time she spoke of the tender and loving way in which the wife of this defendant had for many years cared for and aided her, both by her affection and with money which

(Testimony of George W. Shute.)

the said wife of this defendant had earned and paid over to her. That thereupon, this defendant, his wife being present during all of said conversation, agreed to the proposition made by said Mary B. Cullumber, above stated, and at her special request the deeds described in the complaint herein were prepared and presented to the said Mary B. Cullumber for her signature, and she, knowing the contents of the said deeds and that the same transferred the title of the property described therein to this defendant, being the same property described in the complaint herein, signed, executed and acknowledged the same in the presence of and before Allen Hill, a Notary Public of Yavapai County, Arizona Territory. That from the time of this defendant's arrival in Prescott, as above stated, and during all the time thereafter and when [549] the said Mary B. Cullumber *d*igned and executed said deeds, she, the said Mary B. Cullumber, although physically weak, was mentally strong; that her mind was sound and clear and she understood what she was doing in signing the said deeds—" I will ask you if the consideration recited in there is not the true consideration that was given for the Prescott property?

A. I think all of those facts that are related in there are just as alleged.

Q. Then Mrs. Cullumber understood that she was deeding the property to you and not to your wife?

A. No, Mrs. Cullumber did not understand that, because the understanding was all of the time that

(Testimony of George W. Shute.)

this property should go to Mrs. Shute. In other words, Mrs. Shute owned a half interest in the property and always claimed what was called the grandmother property. You will notice that that answer is prepared by Robert E. Morrison down in Prescott and was upon facts furnished there by Mrs. Shute, evidently, and sent to me in Globe, where I signed the verification on it.

Q. The verification was at Globe?

A. I believe it was.

Q. You of course read and understood it before you signed it? A. Yes.

Q. I want to read from the certified copy. "That while the consideration named in each of said deeds is the sum of ten dollars, the actual consideration was for and on account of large sums of money paid over by this defendant to said Mary B Cullumber for her support and also by the wife of this defendant for a like purpose, and a further consideration was the love and affection between [550] the wife of this defendant and the said Mary B. Cullumber." That is true, is it not?

A. I think that is true.

Mr. NEALON.—Now, we have both the complaint and the answer here,—a certified copy—and ask that they be admitted in evidence.

The COURT.—They may be admitted.

Mr. NEALON.—Q. Now, Judge Shute, you recognize that there is a consideration in that deed?

A. As expressed in the deed, yes. The facts were

(Testimony of George W. Shute.)

just exactly as I told them to you and relate them to you.

Q. And that consideration, a large portion of it, was funds earned by you after your marriage?

A. The moneys that we had sent to Mrs. Cullumber, of course, came out of my earnings.

Q. And they were community funds?

A. Yes.

Q. And your agreement to support her for the rest of her life, the principal consideration in the deed, was a community obligation?

A. Mrs. Cullumber, as I told you, when I went there at Mrs. Shute's request, was in a condition that we did not expect her to live from day to day and it was not but a little while,—the day I don't remember but it was not but a little while after that until Mrs. Cullumber died. The reason for the giving of the deed was to transfer the property back where it properly belonged, to Mrs. Shute, because I had no interest in it, and had never given anything to the property or for the property and anything that Mrs. Cullumber had gotten was—arose [551] through the relationship between Mrs. Shute and Mrs. Cullumber.

Q. But if she had recovered and lived for ten years you had made a community obligation to support her during that period, did you not?

A. Well, that might be construed that way. I don't know.

Q. And that was a consideration for the deed?

A. No.

(Testimony of George W. Shute.)

Q. You so contended in this answer of yours, did you not?

A. That answer, as I say, was filed for the express purpose of overcoming what they claimed was a condition of mind existing upon Mrs. Cullumber's part, namely, that she did not know what she was doing at the time she signed this agreement; that she was mentally incompetent, and those were the facts prepared by Mr. Morrison to meet those that arose long after the death of Aunt Mary.

Q. You read the complaint?

A. Undoubtedly did.

Q. The answer, I mean? A. Undoubtedly did.

Q. You verified it?

A. I swore to the verification to the answer.

Q. You subsequently mortgaged the property, did you not? A. Yes, I mortgaged it twice.

Q. To buy cattle with?

A. Once to buy cattle with and once for some other purpose. I have forgotten just what the other purpose was. Yes, I think there was two times. One was mortgaged at one time and then at another time both pieces was mortgaged. [552]

Q. Now, in view of that, do you wish to in any way correct your testimony in regard to there being no community consideration for the Prescott property?

A. I do not. The facts are just as I have related them surrounding that transaction.

Q. Now, you sold this property to Mr. Robinson, when? A. To who?

(Testimony of George W. Shute.)

Q. To Mr. Robinson.

A. Johnny Robinson. I think it was 1916 but I am very uncertain about those dates. I notice that what I thought was 1910 was 1909. That shows the way it might go. It might be 1915 and it might be 1917 but that is approximately correct.

Q. Now what did you do with the money, when you received the consideration from Mr. Robinson, on the sale of this property?

A. It was used in some capacity. I don't know. I can't remember exactly what was done with it. It seems to me that a part of it was used in paying off the mortgage that still existed upon the property that I had deeded to Mrs. Shute in 1907. I am not sure about that. In fact I can't remember just how that money was applied. The only thing that I do remember was that Mrs. Shute got none of it, because that was ever after that a bone of contention between the two *if* us relative to her rights in that money.

Q. Some of that money was invested in cattle, was it not? A. The sale from the—

Q. Yes. A. No.

Q. What did you do with the money then, other than you stated? Can you tell any more completely about that?

A. I have told you about what happened to it. It was used [553] at that time as I stated.

Q. You recall Mrs. Shute's testimony before the Referee in answer to questions by yourself, that

(Testimony of George W. Shute.)

some cattle were jointly owned by her and your brother and perhaps yourself, do you not?

A. Yes, I remember it.

Q. She stated that the cattle were hers, so far as that interest was concerned, did she not?

A. She always claimed those cattle.

Q. And claimed them as a result of funds that were derived from this Prescott property?

A. No, you have that wrong.

Q. All right, explain it, please.

A. She always claimed it because of money that was put into those cattle, which went in in 1911 or 12—along there somewhere—was money that was derived from the mortgage of this property back in 1911 or 1912—along there somewhere, but not from the sale of it.

Q. The property was afterwards lost—I mean the cattle were afterwards lost through drought or something of that kind?

A. Well, they were finally—the business transaction was a loss but they were finally sold.

Q. Now do you recall her testimony to the effect that the amount realized from the sale of the remnant of cattle was insufficient to pay the mortgage or other indebtedness against them, do you not?

A. I don't remember just what was said about that. I would be glad to see it, so that I might check it up.

Q. It is Mrs. Shute's testimony there.

A. Well, if she did testify to it, Mr. Nealson, why we will say that she did, whatever it was. [554]

(Testimony of George W. Shute.)

Q. And you will recall further that she testified, in answer to your question, that the amounts so realizes being insufficient to pay the indebtedness, that it was necessary to sell the little house in Globe, in order to pay the balance?

A. No, she never said anything of the kind.

Q. All right, we will get the record on that.

(Deed to J. H. Robinson was then admitted in evidence without objection.)

Mr. NEALON.—Q. Now, when was the Maple Street property in Globe bought, Judge Shute?

A. I think that was in 1924. I would say about that date—1904.

Q. 1904. When was that disposed of?

A. I think in 1907 or 1908.

Q. Do you recall about what amount was received for that property?

A. No, I do not. I think, though, the way I figured it, I know this, there was a mortgage on it and I sold it to my own father and I figured up the amount of money that I owed when I came back from Northwestern. He assumed the payment of the mortgage and gave me a sufficient amount of money to clear off the debts that I had.

Q. So far as the Maple Street property is concerned, there was no surplus left when you sold it?

A. No, no surplus.

Q. Now the next piece of property you acquired was what you have called the Devereaux Street property? A. Yes.

Q. Now, when was that acquired?

(Testimony of George W. Shute.)

A. I think in 1907. [555]

Q. That was bought on a small cash payment and the balance monthly, was it not?

A. Yes, I think the purchase price of the property, if I remember it rightly, was $2700.00. Paid in cash eleven or twelve hundred dollars, and borrowed the balance of the money on the property itself.

Q. That is, of the purchase price? A. Yes.

Q. And that you paid our of your own earnings?

A. The mortgage?

Q. Yes.

A. Well, that mortgage was carried a long time. I don't remember. It went through two or three hands. I borrowed from Peter to pay Paul and it went down through a good number of years and I am not just sure how that property—that mortgage was finally disposed of. I am inclined to think that a portion of it came from the sale of this Prescott property. It runs through my mind that that was a portion of it.

Q. Do you mean a portion of the payment of the mortgage itself? A. Yes.

Q. Came from the sale of the Prescott property?

A. That runs through my mind that that is true. I know the mortgage was not discharged until way down toward 1915 or 16—along there somewhere.

Q. Now, you owned that property up until 1922, did you not? A. 1920.

Q. 1920? A. Yes.

Q. To whom did you sell that property? [556]

(Testimony of George W. Shute.)

A. That property was transferred and went on the deal—went on the trade for the property that is in controversy here. I am not sure whether the deed was made directly to Hoyt Medlar or whether it was made to the First National Bank of Globe, but one or the other. In other words, as I stated, the trade took place in there during the matter of purchase, whereby the Devereaux Street property was credited upon the purchase price of the Cottonwood Street or the Sycamore Street property, and became part of it but just how that was handled, I don't know. In other words, there was John Griffin interested in the trade, Hoyt Medlar was interested in the trade, and a man by the name of Sanders, in whose name the deed stood, was interested in the trade.

Q. Was there a mortgage given against that property by Hoyt Medlar and Ruth Medlar to G. W. Shute, dated July 1, 1922, and recorded August 9, 1922, Judge Shute, in the sum of $3629.50? A. What is that?

Q. There was a mortgage given against that property by Hoyt Medlar and Ruth Medlar to G. W. Shute dated July 1, 1922, and recorded August 9, 1922, was there not, of $3629.50? That Devereaux Street property, I am referring to now.

A. I don't remember just how that worked in, Mr. Nealon. All that I do remember was that, as I told you, John Griffin was interested in the trade and Sanders was interested in the trade and Hoyt Medlar was interested in the trade. When we first

(Testimony of George W. Shute.)

bought the Cottonwood Street property, it was deeded right directly to Mrs. Shute and the money was borrowed from Mrs. Holmes and there was a mortgage carried at the same time by Sanders for a time [557] upon the Cottonwood Street property and then that mortgage to Sanders was taken care of by this deed with Hoyt Medlar. Just the dates I don't remember.

Q. What I am asking you about is a mortgage executed to you in 1922 for $3629.50. Have you any recollection in regard to that mortgage?

A. I have a recollection that there was a mortgage or some sort of an understanding that ran to Hoyt Medlar, because he is the one through which the trade worked, whereby the property went into the Sycamore Street property.

Q. This mortgage is two years subsequent to the deed to you, is it not?

A. That seems to me to be impossible. It does not seem to me that it could have been that long, because it seems to me that this trade was traded immediately; that that was one of the things that induced me to go into this deal with Sanders, because of this interlocking thing.

Q. Why was this mortgage given to you, Judge Shute? A. The Hoyt Medlar mortgage?

Q. You notice it is a mortgage to you, not to Mrs. Shute?

A. I am sure I don't know, except it was done in pursuance of this interlocking trade that took place

(Testimony of George W. Shute.)

there between myself, the bank, Medlar and Sanders, and Griffin.

Q. Now this mortgage—I might say that I am reading from information furnished me by the Gila County—

A. By the way was there a deed from—do you know whether there was a deed from ourselves to Medlar?

Q. If you wish me to I will read the record down on this.

A. I now ask that question. That will sort of—

Q. What was it? [558]

A. Was there a deed to the Sycamore Street—not the Sycamore but the Devereaux Street property from Mrs. Shute to Medlar?

Q. No. So far as the record shows, the title is still in Mrs. Shute.

A. Well, I can't answer it. I don't know. Now, that is a matter that I just simply can't answer because the trade took place in the manner in which I have testified to.

Q. Now, I will ask you about a mortgage—

A. I don't know why he would be giving a mortgage on it with the title in Mrs. Shute, except there may have been some reason there in carrying the trade into effect.

Q. Assignment recorded in Book 1, page 227, on August 9, 1922, by you to the First National Bank of Globe, for $3629.29, recorded August 9, 1922, acknowledgment taken by M. L. Harrison. Does

(Testimony of George W. Shute.)

that refresh your memory in any way in regard to that transaction?

A. No, it does not, Mr. Nealon. I can't remember the reason and the way that this transfer took place. I know that it took place and that is about all that I know.

Q. Now I will read you this, just to ask you about it later, and it perhaps will answer part of what you asked me about. The deeds to the part of Lot 1 are as follows: Book 13, page 184, dated August 17, 1907, Lucy Moorehead and J. H. Moorehead, husband, to G. W. Shute, recorded August 24, 1907, consideration $2750.00, the north forty feet by seventy-five feet top of lot one. Can you explain anything about that?

A. That is the Devereaux Street property.

Q. Subsequently there was a deed from you to Mrs. Shute of that property? A. Yes. [559]

Q. Now if this went into the Globe home place, which is the subject of controversy here, have you any explanation of why this mortgage was given to you two years after the purchase of that place—purchase of the Sycamore Street—

A. No, that does not seem to me to be reasonable. I can remember how it was done or why it was done, because the trade ran almost from the start, as I told you, and was finally settled up—what I thought was about six or eight months afterwards, at the most, by virtue of those different transfers from Griffin or from Sanders to Griffin to Medlar to the bank from Mrs. Shute and myself.

(Testimony of George W. Shute.)

Q. Was there a mortgage upon the Devereaux Street property at the time of the sale of it?

A. I don't believe there was. I have no recollection of there being a mortgage on it at that time. I think it was clear.

Q. In the testimony of Mrs. Holmes, there appears read in the record this letter from you to her, dated August 14, 1928, and addressed to her at her home in Massachusetts. "The insurance on the house has been kept up and I should have sent you the policies. They have been renewed and paid from time to time, so that the protection is there for any interest which you may have. The proceedings here can in nowise affect your interest." What do you have reference to, to the proceedings here? A. Will you state that—

Q. Read back the part that I have read.

A. Just the date of the letter.

Q. August 14, 1928.

A. Well, I must have had reference—

Q. To this bankruptcy proceeding? [560]

A. To this bankruptcy proceeding, yes.

Q. I continue reading the letter. "In fact, it has been left as it is with the express purpose of protecting me in a way on questions which I knew would arise relative to the house. The property in Globe belongs exclusively to Mrs. Shute and has from the beginning, but there is always some question in matters of this kind, and it was with this in view that I did not pay the entire mortgage at

(Testimony of George W. Shute.)

the time I remitted the $3,000." Just what did you mean by that, Judge Shute?

A. The letter is self-explanatory.

Q. What was it you had in view when you did not pay her the entire mortgage at the time that you paid her the $3,000?

A. I don't remember just why that expression was used in the letter. You see, that $3,000 was paid in 1926, was it not?

Q. '26, yes.

A. '26. I don't remember. I don't just know why I used that expression in the letter.

Q. Were you anticipating some trouble at that time?

A. I don't know whether I was or not. I don't know whether the matter had been taken up with me by Miss Birdsall at that time or not, but if it had not been, I can't imagine why there was any question about it.

Q. But in any case, you were purposely leaving a part of the mortgage unpaid, so that you might use that in some manner in future litigation; is that the idea?

A. Well, I don't know. That letter is just about as self-explanatory as I can explain.

Q. What did you mean by saying that it has been left as it is with the express purpose of protecting me in a way on a [561] question which I knew would arise relative to the house?

A. Undoubtedly I had in mind the very thing

(Testimony of George W. Shute.)

which did arise, namely, the claim by you of the community interest in it.

Q. Did you have in mind that there might be a bankruptcy proceedings?

A. No. You mean when the letter was written?

Q. Yes.

A. When the letter was written, bankruptcy proceedings had long been instituted.

Q. You had in mind, then, the bankruptcy proceedings at the time the letter was written? That is what you had in mind?

A. I assume that I did.

Q. But what did you have in mind at the time that you held back the payment of the balance and paid $3,000 on the mortgage?

A. The letter is just as self-explanatory as I can make it. I don't know. If I had taken it up with Miss Birdsall—if that matter had come in, undoubtedly I had that in mind. If it had not been, I can't imagine why I would make that statement.

Q. Well, in what manner did you expect to be protected by it? A. A simple reason.

Q. By Mrs. Holmes?

A. The simple reason that here was a balance on an unsatisfied mortgage, which, if I paid the amount off, I would immediately be charged with it, and it would just simply save me that amount of money if, in the final determination, if it was the result that the property was not her property but was community. [562]

(Testimony of George W. Shute.)

Q. Now, Judge Shute, you paid the $3,000 to Mrs. Holmes on the mortgage out of the community funds, did you not?

A. Yes, that was community.

Q. And, if that is true, as a matter of law, I am asking you now, wouldn't the community be subrogated to the right of the mortgagee as against Mrs. Shute as if this were separate property, if your contention is correct?

A. I don't get the question. If you are asking me as a legal proposition, I don't think I will discuss that with you, because I am satisfied that you and I would not agree upon the conclusion.

Q. Now, I will ask you then, why, if you paid from the community funds a sum of $3,000 on separate property of Mrs. Shute, didn't you list that $3,000 that you had so paid as an asset of the estate in this bankruptcy proceeding?

A. For the simple reason that it is my understanding and always has been that the title to the property—interest—whether it may be a separate interest or not is not determined by whether or not you may put separate funds into it but is dependent entirely upon whether or not it can be identified as separate estate and no amount that I might put into it could change the character of her estate as it was originally created. For no other reason.

Q. You do not recognize that the payment of a sum for the purpose of preserving the separate estate would give the party objecting any rights in

(Testimony of George W. Shute.)

subrogation as to the rights of the mortgage creditors?

A. That is not my understanding of the law as to community property in Arizona. [563]

Q. Well, isn't that a rather e*w*uitable proposition. rather than any question of community property?

A. I am not going to argue that with you.

Q. Anyway you knew that you had paid from the community funds $5,000 on the mortgage at the time that you made out your schedules, did you not?

A. Yes.

Q. Now you have testified that you have given Mrs. Shute this house in Globe to in part satisfy her for the proceeds of the Prescott property, is that right?

A. Well, no, that is not—you say that I have testified to that?

Q. Well, no, I mean is that the fact?

A. No, I don't think that is the fact.

Q. Now, it is your contention that the house in Globe is hers because it was paid off from the proceeds of the separate property at Globe, do you,—at Prescott? A. No, not at all.

Q. Not at all? A. Not at all.

Q. Didn't you testify, in your direct examination, that not one cent of community funds went into it, or something to that effect? A. Why, no.

Q. Then, just what is your idea, then? You owe her $4500? Is that right?

A. No, that is not my contention.

Q. All right; please explain it.

(Testimony of George W. Shute.)

Q. My contention is that at the time of her leaving Globe that she told me she was not coming back to Globe until I had a house for her and that she wanted it distinctly understood that ever after that the home would be hers, [564] so that I could not repeat the process of selling it, as I had done with what we will call the Maple Street property. That property, in pursuance of that understanding with Mrs. Shute, was deeded directly to her at the time or shortly after its purchase from Moorehead. In pursuance of that understanding, when we came down to 1920 and she became dissatisfied with living in the Maple Street property, because of certain things that are not material to this at all, she bought the property that we will call the Sycamore Street property, the property in controversy, and it was deeded directly to her and the property which we had had before that time, namely, the Devereaux Street property, went directly into that purchase price. I never even claimed an interest in that property of no kind at no time. Always it was Mrs. Shute's—belonged exclusively to her, and, as witnessed by the deposition of Mrs. Holmes, who did not know anything about this proposition, except what may have been communicated to her by letter,—in that deposition,—that old Puritanical old lady said that at the time she loaned that money it was her understanding that that home was hers,—Mrs. Shute's, just the same as her home was Mrs. Holmes' home. Where did she get it? It must

(Testimony of George W. Shute.)

have been discussed by letter or in some way at the time of that purchase.

Q. The letter is in the record is it not?

A. I believe it is, yes. I believe the deposition is in evidence.

Q. The deposition is?

A. It is in the record. I don't think there is any letter to that effect in there.

Q. Well, the copy of the letters—the letters that are there,— [565]

A. Oh, that is not what I refer to.

Q. What did you refer to?

A. I refer to the statement that Mrs. Holmes made in the deposition, it was always her understanding.

Q. Now, then, you are not making the contention any more that the property—Sycamore Street property was bought with the proceeds of the property at Prescott; is that right?

A. I don't think I ever did make that contention. There must be some error, because I don't think I made that contention. If I did, I certainly am in error that I would check right up, because when I worked it out and gone down through the matter, I can see very clearly just what these transactions were in the main.

Q. Now, may I call your attention, Judge Shute, to the very first meeting of creditors on May 1, 1928, in which this question was asked you as to that: "No other real property at Globe? No, there

(Testimony of George W. Shute.)
is no other property there except the place we lived in at Sycamore and First.

Q. That is in Mrs. Shute's name? That is her property. She got it about 1919. Was it purchased with her own funds? It was purchased with funds she obtained, except for a very small part, from the sale of some property she had at the corner of Gurley and Mount Vernon Streets, in Prescott. That was her property there? That was her separate property."

Q. Now, will you explain that testimony and those answers?

A. I can very easily see why I would say that, because the money that came in from this Prescott property in 1916, I had in mind had gone in part, at least, to satisfy this mortgage that was upon the Devereaux property there for the money that had come in and satisfied that mortgage and [566] went into the Devereaux property—had been transmitted directly through the Devereaux property to the Sycamore Street property. I can see why I would say that very easily.

Q. Well, now, which is the—

A. The statement that I make now is far better than the one I made then, for the reason that I have gone back over these transactions, have reviewed them with Mrs. Shute, have examined some of the records and the possibility that we have to determine just what was done and have clarified the situation considerably.

(Testimony of George W. Shute.)

Q. Then you are not now contending that your statement made on May 1, 1928, in regard to the consideration for the purchase of that Sycamore Street property was correct, are you?

A. Well, I am not entirely clear about that even yet. I am not entirely satisfied that a portion of the money that came in from the Prescott property did not go to help discharge the mortgage that was upon the Devereaux property.

Q. When was the mortgage on the Devereaux Street property satisfied?

A. I believe that that was—that is what makes me doubt it. It seems to me that that was in 1916. I have the release the original release but I haven't it with me.

Q. How much was that mortgage?

A. It seems to me it was $2,000. At that time, there was probably some interest added to the original amount. I don't remember. It was somewhere along there.

Q. I want to read you a little more of that testimony so that it may aid you in a further explanation. "This balance that you speak of, outside of what was received from the sale of this property in Prescott, what was that? [567]

A. That was paid partly by myself and partly by her out of money she had saved out of her housekeeping allowance. It is not all paid yet." You were referring there to the balance paid on the Sycamore Street property were you not?

(Testimony of George W. Shute.)

A. I think that is what that testimony has reference to.

Q. Now, you were further asked "How much is still due?" I am not certain. I would say approximately $700 to $1,000. Q. Then, at the time of the payment of this balance made by you and her out of housekeeping money, that was subsequent to the incurring of the indebtedness to Mr. Mackay? And your answer was "I think so. I think this transaction with the bank was in 1917 or it might have been in 1918 and I think the property was purchased after that." That is correct, is it?

A. I believe so.

Q. Then you were asked this question. "Then the amount you paid in was from community funds? Yes, it would be community funds. What was that amount, approximately? Well, it is pretty hard for me to say. It was paid in little small amounts from time to time and I don't know. I think I could probably get the amount of that." That is correct, is it not? A. That statement?

Q. Yes.

A. Yes, I think I made that statement.

Q. Now, giving some questions in regard to the worth, etc., you were asked this question: "Of the amount of the purchase price upon the property, do you think you paid as much as $1,000? A. Yes, I think I did. Q. More than that? I might have paid a little more than that. As much as $2,000? I don't think so." That was your testimony at that time? [568] A. Yes.

(Testimony of George W. Shute.)

Q. Was that correct?

A. It was correct in this, if you are directing the attention to the fact that I had paid in one check $3,000. I was testifying about these amounts that had come along which you had been examining me about relative to the small payments that had come up in that time.

Q. And those were paid from the community finds?

A. That is what I stated at that time. I was under the impression that most of those payments had been made by me out of little amounts that I had earned and, when I checked it up, I found that a considerable amount of those payments had gone in in the way of rent receipts to Mrs. Holmes.

Q. You spoke of the date of the Devereaux Street property there. What was the date of the indebtedness?

A. 1907, the original indebtedness was incurred. It never was discharged until 1916 or 17. Right along there.

Q. To whom was that indebtedness due?

A. I think the first mortgage ran to Dudley I. Craig, if my memory serves me. I may be just a little bit turned around on that. And then I borrowed from a man by the name of Fall on account paid to pay Craig and then later discharged the obligation to Fall. That is my recollection of the way that transaction went through.

The COURT.— . . . I wanted to refresh my recollection in connection with the question that

you asked him about this property and the conveyance. I was just wondering why the bankrupt could not have given his wife anything he wanted to before that time.

Mr. NEALON.—If your Honor please, we were proving insolvency the [569] other day, and your Honor limited us to ten years. We could have proven—at least that is my contention now—insolvency at a much earlier date than that.

The COURT.—When I spoke of the dated, I meant, of course, back to the date of the note,—obligation that was filed in this proceeding. How are we concerned with anything that preceded that as to community status of the property?

Mr. NEALON.—The rule in bankruptcy is, if your Honor please, if the conveyance was void as against any creditor at the time that it was given, it may be used—the advantage of that may be taken by the trustee in bankruptcy—any creditor. It does not make any difference whether it is the creditor that is represented in the estate or not. The rule is somewhat different from the usual rule to fraudulent conveyances.

Mr. DYER.—I call the Court's attention to the fact that the insolvency went back for a long period. It shows under this testimony that a debt due to the Old Dominion Bank was settled for $2500.00, which he himself said, according to his own testimony, had been running fifteen or sixteen or seventeen years and which was not settled until 1928.

The COURT.—Well, I suppose that could get

(Testimony of George W. Shute.)

all of us for concealing assets and making false statements if that would be the law.

Mr. DYER.—No, he was insolvent at the time he gave it to his wife. [570]

The COURT.—I understand that.

Mr. DYER.—And that insolvency continued until after 1918, when this debt occurred.

The COURT.—Go ahead.

Mr. NEALON.—Q. Judge Shute do you recall that you testified that the reason that you did not list your interest in the firm of Armstrong, Lewis & Kramer was there was some question about how much that interest was, did you not?

A. I think the conclusion which you drew may be a fair conclusion.

Q. Now, you had been discussing that before you filed your petition in bankruptcy?

A. You mean with the members of the firm?

Q. Yes, with Mr. Moore particularly.

A. Yes, we had.

Q. And the firm owned considerable personal property in which you had a one-fourth interest, did it not, at the time you filed your petition in bankruptcy?

A. The interest which I have in the firm assets is the same. I don't believe that my interest in the furniture and things of that sort would go to 25%. I must ask Mr.—

Q. 20% is it not? A. 20%.

Q. And 25% in whatever accounts belonged to the firm? A. That changed from time to time.

(Testimony of George W. Shute.)

Q. That changed according to these various contracts? A. Yes.

Q. Now, then, at the time you did make your schedules, you had a valuable interest in the physical assets of that firm, did you not? [571]

A. Yes, it now so shows.

Q. Now, why didn't it show at that time. There was no question about that at that time?

A. I don't think there was.

Q. Now, why didn't you show that in your schedules?

A. For the reasons that I have stated. In fact, I hesitated to list the firm assets as long as the matter was not properly adjusted and, after the conference with the trustee and after the conference with the referee, I listed everything that we could think of that would be properly listed, so that there would be no mistake about it at all.

Q. You will recall that that was after demand was made upon you for the amendment of your schedules? It was, an order by the referee.

A. That was the first meeting that it was talked and discussed, when we arrived at just what ought to be listed and what ought not to be listed.

Q. Why Judge Shute, that is not the time, according to your contention, when you should arrive at a show-down of your property; after a discussion in the first meeting of creditors, is it?

A. I am not going to argue that question with you. I tried to be just as honest about it and as fair about it as the situation would permit me to be.

(Testimony of George W. Shute.)

Q. Now the total amount of valuable assets that you listed amounted to $290.00 or thereabouts above your exemptions, did it not?

A. The schedule shows what it was.

Q. This is preliminary. Now, if the creditor had not made an independent investigation—had accepted your statements in every way in regard to that, in your schedules the [572] statement—that would have been all that would have been realized from that assets, would it have not?

Q. With all of my ignorance of bankruptcy law, with all of my error in interpretation, it has never been my understanding that errors could not creep into the listing of property and that the primary duty of the trustee is to assemble and collect the assets, no matter whether they may be on the schedule or not.

Q. You did not understand that it is the duty of the bankrupt to exhibit all of those assets—to report when he is filing his schedules in bankruptcy?

A. Not all of them, no, sir. I have never had any such understanding as that. My understanding is that he should list all of them that he knew belonged to the estate at that time, and the trustee would collect them and assume the burden of taking care of those assets for the purpose of disposing of his duty.

Q. How was the trustee to have learned of the existence of these assets?

(Testimony of George W. Shute.)

A. He could have learned that by any way that might be available. By asking, which was done; by going over lists of checks and things of that sort and determining what was listed and what was not listed; what belonged to my estate and what did not belong to it. It is a very easy process.

Q. Now, those checks had been produced at that time, had they, Judge Shute?

A. What, the first meeting?

Q. The meeting of May 1, I am referring to.

A. Had not been.

Q. Now, this property, this Sycamore Street property, ordinarily that would not have been discovered by anyone interested in the estate—this proceeding being filed in this [573] county and that property in Gila County, and would not have been in this case except that Miss Birdsall had been a former resident of Gila County and was familiar with the facts; is that not true?

A. That is not true.

Q. Well, please explain how the information would have—

A. Almost the very first questions that were asked me revealed the so-called discovered property that has been discovered and was known to the trustee from the first meeting on, without any question.

Q. That information was in the possession of the attorney for the creditor, who asked you the direct questions, and that was the way it was revealed.

A. I am sure I don't know, but there was no

(Testimony of George W. Shute.)

doubt about the revealing of it. No time to conceal it. No time to evade just exactly what the legal situation was.

Q. If there had been no trustee appointed, what then? A. I am sure I don't know.

Q. If the creditors had accepted your schedules as correct, what then?

A. They would not have lost anything by leaving off the Globe property.

Q. How about the other properties?

A. I don't know of any other properties that they would have gained except the policy. There would have been a loss on that and the car, which came in later, there would have been a loss on that.

Q. And the 20% of the office furniture?

A. Well, I don't know about that Mr. Nealon.

Q. The interest in the firm of Armstrong, Lewis & Kramer?

A. Well, I am sure I don't know about that. I don't know just what that situation would be. [574]

Q. And the other sums paid into the estate, making, with the car and the insurance, more than $2,000, that is all collected,—none of it was listed in your schedules at all; is that not true?

A. Well, the policy was not listed and the car was not listed and the result of it is shown by the testimony that has come in.

Q. To revert for just a moment to the savings account for a question that I omitted; at the time that you made these deposits in the savings account

(Testimony of George W. Shute.)

to the credit of Mrs. Shute, you knew you were taking funds that would otherwise have gone to the creditor who has filed a claim in this court, do you not?

A. Oh, I had no such understanding until the end of 1927.

Q. You did have in 1927?

A. Well, at the end of 1927, I began to see the storm clouds.

Q. And this debt was in existence before that?

A. Mr. Nealon, the record shows all of that stuff. What is the use of asking me when it is admitted.

Q. All right. You did that to conceal this asset from your creditors? A. I certainly did not.

Q. You saw the storm coming, you testified?

A. Yes, but that—

Q. And then you put it in this fund?

A. That was a fund that had started long ago and for an express purpose.

Q. Started in September of 1926, did it not?

A. Yes, 1926, or whenever the date of it was. Anything I put in that fund I put in there with the best faith in the world, without any intention of hurting anybody in all this wide world. [575]

Q. But you saw the storm coming at that time?

A. I think at the end of 1927—along there.

Q. Now, Judge Shute, you did testify in the referee's court that during all of this period said bankrupt had been with the firm of Armstrong, Lewis & Kramer did you receive any large sums of money from any other source than this you have testified

(Testimony of George W. Shute.)

to and your answer, "I think I have testified to all of then, either at this hearing or the other one." That is a correct statement?

A. I remember that, yes.

Q. Now, you had received, otherwise than from Armstrong, Lewis & Kramer, the sum of $5,000 net on the Julian deal? A. Yes.

Q. And you had received approximately $3,000 or $4,000 from Wesley Goswick and Packard?

A. No, I had not.

Q. Well, you had received at least $3,000 according to your testimony, hadn't you?

The COURT.—Now all of that has been testified to, Mr. Nealon. Why go over it again.

Mr. NEALON.—It was preliminary to another question which *I* witness ought to be informed of.

Q. Now you had received during that time a total of more than $9,000 that did not appear on the books of Armstrong, Lewis & Kramer that you had not testified to; is that not correct?

A. Whatever the record shows.

Q. And you knew that at that time, did you not—at the time you testified? [576]

A. What do you mean by knew?

A. You knew that you had received those sums of money, did you not?

A. Part of them I knew, yes.

Q. You testified in your direct examination that I had never demanded the lease of the Lynwood Stret property from you. I ask you if I did not demand that several times in the record?

A. Do you mean of the—

Q. In the examination.

(Testimony of George W. Shute.)

A. The written instrument itself?

Q. The written instrument itself.

A. Or the tenure? You probably asked for the written lease but I don't believe that I could ever find that lease.

Q. That lease has never yet been delivered to the trustee, has it? A. I don't think so.

Q. You stated yesterday that you would produce it.

A. I don't believe I had it. I remember that and, in fact, I did look for it. I know, however, I could not find the lease or pay very much attention to it, being one of those sort of things that was simply the evidence of my right to live there during the period.

Q. Don't you think the trustee should have the right to examine the instrument?

A. Sure. I should have been very glad to turn it over to you, if I could have found it.

Q. You should have listed that?

A. No, I didn't list it, and it should have been listed. There is another instance of where a listing ought to take place of whatever it is worth. [577]

Q. Now the lease did have the last month's rent paid upon it? A. It did.

Q. And the first month's rent, after bankruptcy, had been paid two days before your filing of the schedules?

A. I believe the record shows that.

Q. Of course, that matter is in issue before the referee. Now the question of—

A. Your right to the lease?

(Testimony of George W. Shute.)

Q. Of my right to the sum of $150.00.

A. Yes. No demand has ever been made by you, Mr. Nealon, for the lease or for the occupation.

Q. You mean for the possession of the property? We won't dispute.

A. Oh, you did demand I pay you $150, which was the first month that had been paid and the $75.00 that was due on the end of the lease.

Q. You have occupied the premises during all of the time of that lease? A. I have.

Q. At the first meeting of creditors, you did not disclose that you had a lease upon the premises, did you?

A. I don't remember just which one of those meetings it was, Mr. Nealon.

Q. It was not until June 15, was it?

A. I don't remember when it was. The first time that it ever came up or that I was ever asked about it, I revealed the whole thing fully and completely, and at that time told you that whatever action you wanted to take toward the lease I would be very glad to comply with, except the payment of the $150, which I do not think you are entitled to and I do not think you are entitled to it now. [578]

Q. Now, in reply to your statement that you were ready to move out of the house or something to that effect, I told you, did I not, that I wanted to see the written lease before taking any action, didn't it?

A. I don't remember whether you did or not, Mr. Nealon.

Q. Well, wasn't there quite a little discussion—

The COURT.—It seems to me that this is a mighty small thing to squabble over now. You did not take possession of it. You could have seen the landlord and gotten possession, if he did not have a lease. You did not demand the premises. If he was waiting until he could find that lease, you did not care to take any steps until he found it, although you knew he was there—it seems to me that is too small a thing to fight over here now in court.

Mr. NEALON. — The amount is small, if the Court please, but the decisions are that we are entitled to the last month's rent, which is a deposit, whether we abandoned the lease or not. The abandonment of the lease does not constitute abandonment of the deposit for the security of the last month's rent. It was not up to me to do that and elect to take possession of the house in the middle of the summer, when the concealment of the existence of the lease up to that time had prevented my taking any action in the *soring,* when some values might be made of the lease.

The COURT.—That is pretty strong language to use "concealment of the lease."

Mr. NEALON.—It does not appear in the—

The COURT.—The very fact that a man occupies the premises is some notice to the world that he has some right to remain [579] there and then the creditor is put upon notice, if it comes to a question of that kind. It seems to me that there is so many important matters to be determined in this case that we are losing time with these small matters.

(Testimony of George W. Shute.)

Mr. NEALON.—I am skipping as many as I can, if your Honor please, from my viewpoint.

Q. Some time subsequent to the filing of your petition in bankruptcy, Judge Shute, you had recorded in the name of Mrs. Shute a declaration of homestead on the property at Globe, did you not?

A. You mean that I sent it forward for recordation?

Q. Yes, that it was recorded at your request.

A. Yes, I sent it forward for recordation, yes.

Q. When did Mr. Armstrong and Mr. Kramer waive their rights under the contract?

A. I don't remember just when that discussion came up.

Q. Before or subsequent to bankruptcy?

A. Well, I think it must have been right about that time. Just exactly the time, I don't remember, when that matter was discussed but it must have been right about that time.

Q. When was the new contract entered into?

A. What do you mean?

Q. The Armstrong, Lewis & Kramer.

A. The last one?

Q. The one after Judge Lewis' death.

A. I don't remember. The contract itself—

Q. That contract is in evidence here. The other contracts are not, except the two modifications of that one contract.

A. I don't remember the dates of them. [580]

Mr. NEALON.—Q. Wasn't that question decided

(Testimony of George W. Shute.)

at the time the contract was entered into almost immediately after Judge Lewis' death?

A. I don't remember, Mr. Nealon, when it was done. I know that there was some little question about it and I know there was some little discussion about it and it went along for quite a while, and just when it was done, I don't know.

Q. Now, Judge Shute, the evidence in the record shows that you had an income of $15,250.20 from Armstrong, Lewis & Kramer for 1927; an income from Mr. Goswick of approximately $3,000 and that you received from Miss Wentworth the sum of $995, making a total of $19,245.20—all of that for 1927. Now I have everything that you turned over to me available and I will ask you how you account for *for* the fact that after earnings of that amount in 1927 you had only about $290 to turn in to your creditors when you filed your petition in bankruptcy?

A. The statement here, Mr. Nealon, will show that just as minutely as anything can show it and it would be impossible for me to remember the different steps—different transactions from memory.

Q. What payments did you make in 1927 that would reduce your assets to that extent?

A. The little statement that has been filed here will show the facts — that was prepared by Mr. Lewis will give you a running picture of the whole thing.

Q. I call your attention to the fact that that statement excepting in very few instances, does not

(Testimony of George W. Shute.)

show the [581] disbursements or the purpose thereof, nor the income and that Mr. Lewis' testimony on the stand shows omissions therefrom. Can you make any further explanation than is made in that statement?

A. I will not attempt to, because I think that that clearly reveals just what the situation is. I spend a good deal of money. I used quite a little bit of money. I am drawn on quite heavily by friends and it all goes, it does not seem to me that it makes much difference how much money I make. There always seems to be a demand for it about two days after I get it.

Q. Did you pay any large indebtedness that year, other than the $2200 to the bank at Globe?

A. The statement will show just as nearly as can possibly be shown, Mr. Nealon, just how that money went.

Q. You know that, don't you, whether you did or not?

A. Mr. Nealon, I can't remember just what I did with the money and how I expended it and so on. Large amounts, you say. I don't know what you mean by large amounts.

Q. Is that the best explanation you can make?

A. That is the explanation I give you, sir.

Q. You sat in the case. Would that explanation have been satisfactory to you?

The COURT.—Oh, don't stop to argue that.

Mr. NEALON*S*.—During the year 1926, you re-

(Testimony of George W. Shute.)

ceived from the firm, according to the statements, $7827.45; according to your own testimony, $5,000 from Julian and I think—I am not sure of this—a thousand dollars from Mr. [582] Goswick, making $13,827.45. Can you make any further explanation of the deficiency in assets to meet your liabilities?

A. I think the little statement that has been prepared for that express purpose shows it far more nearly than I could even attempt to show it from memory.

Q. I hand you herewith the statement— I show you the check stubs, consisting of three packages there, together with the bank statements received from you or from your attorney, or from the bank, and ask you to point out where any of these reflect the source of your income during the periods covered thereby?

A. Mr. Nealon, if you will direct my attention to something, I will be very glad to answer that, but I don't know what you have in mind.

Q. I don't consider that my duty. It is your duty to make an accounting, as I see it, under this last amendment of 1926. I am producing all of the data furnished me by you and ask you to give such an accounting.

A. We have made the statement, and it is here on record. We have prepared it from the very data that you show me.

Mr. NEALON.—Your Honor will notice there—

(Testimony of George W. Shute.)

Mr. MOORE.—Q. You refer to Exhibit "A," Judge Shute? [583]

A. Exhibit "A."

Mr. NEALON.—There is nothing that a person can figure excepting a bank account from that exhibit.

The COURT.—Well, I notice here, Exhibit "A," receipts from Armstrong, Lewis & Kramer, rent, sources unavailable; receipts from Wentworth, Hudson car; receipts from Julian, Wesley Goswick, rents, loans. What is it that you want to know?

Mr. NEALON.—Receipts and disbursements, if your Honor please, and I can't get them from that. This was made up too, if your Honor please, long, long afterwards—after the specifications having been filed in here. At least, they were presented long afterwards. There are lots of items — the $750.00 borrowed from the bank, that is not shown here. There are any number of items that we know of and there may be many others.

The COURT.—It seems to me that you could easily call attention to the items that you know are omitted and say you know it and ask the witness.

Mr. NEALON.—But, you don't know whether those are all or not. I called Mr. Lewis' attention, I think, to those on the stand.

The COURT.—Well, I am not going to stay here for an accounting, Mr. Nealon.

Mr. NEALON.—But, I think it is the duty of the bankrupt to have furnished this accounting in court.

Now, if that is an accounting, why it is an accounting, but it is not, according to my contention. [584]

The COURT.—I meant to say that I can't stop this proceeding for the purpose of enabling you or the bankrupt, either one, to make an accounting here. He has answered your question. Now, it is a question of whether his answer is sufficient or whether your showing under your specification was sufficient to bar a discharge. I do not deem it the proper thing for the Court to sit here and make an account of every item of it that he has paid out in the last few years and it seems to me, if you have all of the records, that you can easily have an accounting to show what the records disclose.

Mr. NEALON.—But we haven't the records. That is, exactly what I am speaking about. We haven't the records that will show it. I could make the accounting myself if I knew that.

The COURT.—Well, what do the records that you have show to be lacking?

Mr. NEALON.—It shows many missing checks. They do not show the receipts. This is one of the grounds where the burden of proof falls on the bankrupt in the making of an accounting.

The COURT.—Well, you have heard the testimony that some checks are not available.

Mr. NEALON.—Now, he has stated that he has given us everything here. I will ask to introduce in evidence the books, the checks, the stub books and the bank statements, so that they may become a

part of the record in this case, and offer them as one exhibit, as everything that has been furnished to the trustee. [585]

The COURT.—Well, do you want the Clerk to copy them? I don't think it is a good thing to offer them as one exhibit, because that imposes too great a responsibility upon the Clerk.

Mr. NEALON.—Yes, kept tied up and put altogether. That is my idea of it. It would be too much to string them out through the court. It would take up too much time. Let the clerk make any identification he wants to. That is satisfactory to me, but I want to tender them in court as all that has been given to the trustee in the way of an accounting. If we should have to appeal, I would like to have it for the record, if your Honor please.

The COURT.—Well, you are entitled to introduce them if you so desire.

Mr. NEALON.—And I offer them in evidence.

Mr. MOORE.—No objection.

The COURT.—They may be admitted and, Mr. Clerk, you will make a memoranda showing of what the exhibit consists, so many pages of bank statements, so many packages of cancelled checks, so many deposit slips, if there are such, etc.

The CLERK.—No. 31.

The COURT.—Anything further?

Mr. NEALON.—Yes. We are just about through, if your Honor please. There may be a question or so. [586]

(Testimony of George W. Shute.)

The COURT. — Have you other witnesses for the—

Mr. MOORE.—I want to ask Judge Shute a few questions.

Mr. NEALON.—Might I ask one question before the witness is withdrawn?

The COURT.—I merely asked if the petitioner for discharge had any further witnesses.

Mr. MOORE.—No, sir.

Mr. NEALON.—Q. Judge Shute, I want to call your attention to your testimony given on May 1, 1928, this question and this answer. "Why did you want to give it to him, then?" You were referring to the mortgage that you had given to the First National Bank. And your answer, "At that time, I had in mind that I was going to fight this thing out. I wanted this money to clear up my debts as well as I could and I wanted to protect the car, so people would not be coming back on it. Yes, and after talking it over with older and wiser heads, they advised me not to fight it and I have followed their guidance." Did you so testify?

A. Yes.

Q. The next question, "You intended to put the car away so Mr. Mackay could not realize anything out of it?

A. I never thought of that at all. I knew he could not possibly touch it. It was furtherest from my mind. I made up my mind that he would never get a look-in." Was that your testimony?

(Testimony of George W. Shute.)

A. If that record so shows, that is what I testified to.

Mr. NEALON.—That is all. [587]

Redirect Examination by Mr. MOORE.

Q. In answer to Judge Nealon's question whether or not you knew, at the time that you stated on your examination before the referee, that you had received no large sums of money from any source other than Armstrong, Lewis & Kramer, you stated that at that time you knew that you had received from Julian and Goswick amounts totalling $9,000.-00, did you not? A. Yes.

Q. Please state whether or not, when you answered Judge Nealon's question, as indicated, you at that time had these two items in mind?

A. I was not asked about that. I knew that I had furnished the information, that is, I knew that my bank statements, my deposits and so on, would reflect this amount which I was being examined at length upon—little matters that would not appear in the result at all. I testified about that and would have answered freely and never would have hesitated about it at all, if I had been asked about that Julian transaction. It was a matter that was absolutely open and aboveboard. No reason why I should conceal anything. I thought that had come in and practically gone out within thirty days, the whole of it and more too.

Q. You have not answered my question as to

(Testimony of George W. Shute.)

whether or not, when you made that answer, you had these two items in mind.

A. No, I did not have them in mind when that answer was made. The answer was based entirely upon the examination that was made and every little item that was not shown or covered, that could have been ascertained from the stubs and the checks and the bank records that were then in Mr. Nealon's possession. [588]

Q. State whether or not you and Mr. England have ever yet had any settlement on the amount of this throw-back that you owed him and it was included in the amount of the indebtedness at the time the conditional sales was given on the car in controversy?

A. When the matter came up, after it had been threshed out, Mr. England told me that he would far rather give me the car than to be mixed up with it at all; that he should have instructed the bookkeeper to have carried this amount or should have been carried—not carry it as they carried the amounts of the transfer to the dealers, and he states "I would rather give you a new car than to be mixed up in it at all." I said: "You don't have to give me a new car. I will take the matter right up with the trustee, turn the car over to him and do what I see fit and you need not worry about it any more." That was what was done.

Q. The amount of the throw-backs on these cars had never been charged up to you in England's books? A. No.

(Testimony of George W. Shute.)

Q. In answer to one of Judge Nealon's questions, Judge Shute, you stated that Packard acknowledged an indebtedness to you and give *agout* 20% of the—10% of the option price on this quicksilver property. Do you recall that?

A. I believe I expressed it in that way. I should not have expressed it exactly like that, because Mr. Packard knew that I had had no contract with him or with Goswick over this. He knew that there had never been any discussion about as to what would be done with that deal at all.

Q. In that particular case—

A. He did not owe me anything. Neither one of them owed me anything on it and never had. [589]

Mr. MOORE.—Q. Judge Shute, were you employed by either Packard or Goswick or both of them to adjust the trouble which had arisen between them over this property?

A. I was not employed by either of them. There was no question of employment at all. It was simply a question of a settlement of a family difficulty by one who stood in a fair relation to both of them. There was no employment whatever.

Recross-examination by Mr. NEALON.

Q. Now, the Hudson car was charged to you at the net amount and not the retail price?

A. That is where the difficulty came, Mr. Nealon.

Q. So that there was no reason for putting in a throw-back on it?

(Testimony of George W. Shute.)

A. Why, that is the way the books show.

Q. The first car was a second-hand car, wasn't it, and there would be no throw-back involved?

A. That was a contract.

Q. Now, the Wentworth car was an entirely different matter and there was no throw-back involved in that? A. That was a special transaction.

Q. That was charged as a separate account and appears so here. So that, taking his own figures, there is no throw-back due on any of this or was not at that time was there? I show you his ledger account, so that you may examine them.

A. On the ledger account there isn't anything about it at all.

Q. Then, this existed only in your mind and in Mr. England's mind if it existed; is that right? [590]

A. That is a matter for the Court to determine from the testimony I have given covering that subject.

Q. Any written instrument showing it?

A. No written instrument showing it at all. Simply one of those transactions that come up between what I term a client and that he seems to consider rather a confidential relation as a friend and as his counsel. No reason on earth why Mr. England should lend his aid to a conditional sales contract that there was no foundation for entirely. There was a foundation for it, in fact. It was given in the very best of faith. It was carried on in the very best of faith. Testified to in the very

(Testimony of George W. Shute.)

best of faith and, if, in the end, according to the way these books were kept, he was willing to throw it off to get out of it, I would have been a very poor men indeed if I did not accede to his wish and his desire and surrender it without any fight at all, which I did.

Mr. NEALON.—If your Honor please, I omitted to offer, as a part of the cross-examination, the rest of the testimony given by Judge Shute before the referee, together with the exhibits attached. I am doing that, if your Honor please, so that there may be no confusion in the record.

The COURT.—It may be admitted; I have read it anyway.

Mr. NEALON.—And we want it as a part of the record and I think that probably this is a better time to speak of that—your Honor will, of course, preserve I take it, proper exceptions in regard to anything that you think proper in that record itself, if there be anything ruled out? [591]

The COURT.—My idea about it is that in a proceeding of this kind that you should not proceed in the same technical manner that we would were we trying the case to a jury and I take the record as I find it and I consider it as a whole. If there are any portions of it which you wish to move to strike out, why—

Mr. NEALON.—No, we want the whole thing in, if there is nothing that your Honor felt that you were going to strike out yourself.

(Testimony of W. W. McBride.)

The COURT.—There were some immaterial matters but I don't think that is hurtful. To strike it out would require more pains and trouble than to leave it there.

Mr. NEALON.—That is all. Just one moment. It might be somewhat in the interest of time, inasmuch as we have now introduced in evidence the entire testimony as given by Mr. Shute before the referee, it does not necessitate filing with the Court or with the opposing counsel the evidence that we introduced on the direct. That was all admissions as against interest. I don't see that that is material and would only encumber the record.

TESTIMONY OF W. W. McBRIDE, AS A WITNESS FOR TRUSTEE AND CREDITOR (IN REBUTTAL).

Direct Examination by Mr. NEALON.

Q. Mr. McBride, you testified yesterday morning, I believe, to a meeting with Wesley Goswick?

A. Yes, sir.

Q. Near Payson? A. Yes, sir.

Q. Did you fix the time and place of that?

A. Yes, that was on November 17, 1928. [592]

Q. Did you have someone accompanying you on that trip? A. Yes.

Q. What was it?

A. Mr. James C. Cline of Payson, Deputy Sheriff of Gila County.

(Testimony of W. W. McBride.)

Q. He is in the courtroom now or was here during this trial?

A. Yes, he is in the courtroom present.

Q. Did you at that time meet and have a conversation with Wesley Goswick? A. We did.

Q. Did, in that conversation, the question come up of an agreement between him and Judge Shute?

A. It did.

Mr. NEALON.—Q. Did he say to you that he had entered into a verbal agreement with Judge Shute to pay him 10% of the amounts received on the new contract with Foster, as they were paid him?

A. He did.

Cross-examination by Mr. MOORE.

Q. Did you make any memoranda of that conversation? A. I did immediately thereafter.

Q. And you have refreshed your memory from that? A. Yes, sir.

Q. Are you sure, Mr. McBride, that Goswick did not tell you that he had an agreement on the first deal and not the last?

A. At no time during our conversation did either Mr. Goswick or myself ever make any reference to any other contract other than the contract between him and L. E. Foster.

Q. State, as near as you can, just exactly what Goswick said. [593]

The COURT.—No, I don't think that is material. That is all, Mr. McBride.

(Witness excused.)

Thereupon it was stipulated by counsel that it was understood that the testimony given by A. E. England before the referee had been admitted in evidence.

Thereupon the case was closed.

Creditor's Exhibit No. 29, theretofore admitted in evidence, consisted of certified copy of complaint and answer in Cause No. 5431 in the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai, William Stephens as Administrator of Estate of Mary B. Cullumber, deceased, plaintiff, vs. G. W. Shute, defendant. The first two paragraphs of plaintiff's complaint are as follows:

"I.

"That on the 1st day of November, 1909, Mary B. Cullumber, a resident of the County of Yavapai, Arizona, died intestate, leaving an estate consisting of real and personal property, situate, lying and being in said County and Territory. That thereafter the plaintiff herein duly filed his petition asking for letters of administration on the estate of said Mary B. Cullumber, and was, after a hearing in the Probate Court in and for said County, on March 1st, 1910, by an order of said court duly appointed such administrator of said estate, and that the [594] plaintiff on the 19th day of March, 1910, duly qualified by taking the oath of office and filing his bond as such administrator; that the plaintiff is now, ever since the 19th day of March, 1910, has been, the duly appointed, acting and qualified

administrator of said estate, and in the full discharge of his duties as such administrator. That the defendant is a resident of the City of Globe, County of Gila, Arizona Territory.

"II.

"That on the 18th day of October, 1909, thirteen days before the said Mary B. Cullumber died, she was the owner, in the possession and entitled to the possession of the following described piece and parcel of land, situate in the City of Prescott, Yavapai County, Arizona, to wit: Commencing at a point being the Southwest intersection of Gurley and Mount Vernon Streets in East Prescott, and running from said point south along said Mount Vernon Street on the west side to a point one hundred and fifty feet; thence west fifty feet; thence north one hundred and fifty feet; thence east to place of beginning. That said Mary B. Cullumber on said last-mentioned date, and up to the time of her death was the owner of said property in fee, deraigning her title from the United States by *mean* conveyances. That on the said 18th day of October, 1909, the said Mary B. Cullumber, deceased as aforesaid was, and for a long time theretofore had been a very sick woman both in body and mind; that she was then and for some time prior thereto had been confined to her bed because of said illness, and remained confined to her bed up to the time of her death. That by reason of her said sickness, her mind was weak and incapacitated to such an extent that she was not capable of knowing or compre-

hending what she was doing, and that on said day the defendant, fraudulently taking advantage of the incapacity, illness and weakness of mind of the said Mary B. Cullumber, procured her to sign a pretended deed of conveyance, purporting to convey to the [595] said defendant, the above described piece and parcel of land.

"That the said Mary B. Cullumber's mind was in such weakened condition because of her illness that she did not possess mental capacity to contract, and that said pretended deed was therefore absolutely void. Plaintiff further alleges that he is informed and believes, and therefore alleges the fact to be that said pretended deed was executed by the deceased without any consideration whatever, and that the defendant, and the wife of the defendant, Jessie M. Shute, the said Mary B. Cullumber being old and infirm, sick and incapacitated, visited her sick bed, and by profering aid, sympathy and comfort to the said Mary B. Cullumber, secured and exercised an undue influence over the said deceased, and while the said deceased was mentally incapacitated and under the undue influence of said defendant, and Jessie M. Shute, his wife, she was fraudulently induced to sign said pretended deed.

"That the plaintiff is credibly informed and believes the defendant makes some claim in and to said described premises adverse to the right, title and interest of the plaintiff as such administrator."

Then follows prayer asking judgment that pretended deed be declared null and void and canceled, that plaintiff be declared the owner and entitled to

the possession of the premises and his title thereto be established, and that the defendant be barred and forever estopped from claiming any right or title to said premises adverse to plaintiff, and for costs of suit.

A second cause of action adopts the first paragraph of the first cause of action, and then continues with paragraph II as follows:

"That on the 18th day of October, 1909, the said Mary B. Cullumber was the owner in fee, deraigning her title from the United States through mesne conveyances, and as such owner [596] entitled to the possession of the following described piece or parcel of land situate in the City of Prescott, Yavapai County, Arizona, to wit: Commencing at a point being the southwest intersection of Gurley and Mount Vernon Streets in East Prescott, and running from said point south along said Mount Vernon Street on the west side to a point one hundred and fifty feet; thence west fifty feet; thence north one hundred and fifty feet; thence east to place of beginning. That on the said 18th day of October, 1909, the said Mary B. Cullumber made and executed a certain instrument known and designated as a quitclaim deed purporting to convey to the defendant herein the aforesaid described piece and parcel of property, for the nominal consideration of Ten Dollars, with the understanding and agreement between herself and the defendant that said instrument should not take effect until after the death of the said Mary B. Cullumber, and that the said Mary B. Cullumber in the executing of said

instrument intended thereby to dispose of said property after her death, and it was not her intention or purpose to vest the defendant with the title to said property or any interest therein until after her death.

"That the plaintiff is credibly informed and believes, and so alleges the fact to be, that the defendant makes some claim in and to said premises adverse to the right, title and interest of the plaintiff."

The prayer is practically the same as in the first cause of action. Third and fourth causes of action are set up, the allegations and prayer for relief except as to description of property being identical with those of the first and second causes of action, respectively, except that the property is described as Lot 12 in Block 7 of Prescott, Yavapai County, Arizona, being 50x150′ in dimensions. Said pleading was signed by Ross & O'Sullivan, attorneys for plaintiff, and verified by H. D. Ross as one of the attorneys for plaintiff on the 28th day of October, [597] 1910, and is endorsed "Filed by the Clerk of the Court of Yavapai County at 2:00 o'clock P. M. October 28, 1910." The answer filed by Robt. E. Morrison, attorney for the defendant G. W. Shute, consists first of a demurrer on four separate grounds not here set out, and then answering to the merits as to the first cause of action, first admits all of the allegations contained in the first paragraph and then answers as follows: "Admits that on the 18th day of October, 1909, thirteen days before the said Mary B. Cullumber died, she was the owner

[598] and entitled to the possession of the property described in said cause of action. Denies that on said 18th day of October, 1909, or at any other time, the said Mary B. Cullumber, deceased, was or had been a very sick woman both in mind and body. Denies that she was then or for a long time prior thereto had been confined to her bed because of said illness, but alleges that on said day and for some time prior thereto she had been confined to her bed because of a physical illness and remained confined to her bed up to the time of her death. Denies that by reason of said or any sickness her mind was weak and incapacitated to any extent, and denies that she was not capable of knowing or comprehending what she was doing, but alleges that at all times up to the day of her death the said Mary B. Cullumber's mind was strong and that she was capable of comprehending and did comprehend everything that she was doing. Denies that on said 18th day of October, 1909, or at any other time, defendant fraudulently or in any other manner took advantage of any incapacity, illness or weakness of mind of the said Mrs. Mary B. Cullumber to procure her to sign a pretended or any deed of conveyance purporting to convey to this defendant the piece and parcel of land described in said first cause of action; but alleges that the deed described in said cause of action was executed and signed by said Mary B. Cullumber on said 18th day of October, 1909, of her own free will, and that her mental condition at said time was sound. Denies that said

Mary B. Cullumber's mind was in such a weakened condition because of her illness that she did not possess mental capacity to contract, and denies that said pretended deed was therefore absolutely void. But alleges that at the time of the execution of said deed by said Mary B. Cullumber she was entirely competent and qualified and did possess mental capacity to execute said deed. [599]

Defendant denies that said deed was executed to the defendant without any consideration whatever, but alleges that there was a good and valuable consideration for the making of said deed to this defendant, as will more fully appear hereafter in this answer. Denies that defendant and the wife of this defendant, or either of them, the said Mary B. Cullumber being old and infirm, sick and incapacitated, visited her sick bed and by proffering aid, sympathy and comfort to said Mary B. Cullumber, secured or exercised undue or any improper influence over the said deceased; and denies that while the said deceased was mentally incapacitated or under undue or any improper influence of said defendant and the said Jessie M. Shute, his wife, or either of them, she was fraudulently or in any improper way induced to sign said deed. Alleges that said Mary B. Cullumber at said time was not incapacitated to transact business affairs and make contracts, nor was she at said time under undue or any improper influence of defendant or Jessie M. Shute, his wife, And further alleges that defendant and his said wife did proffer aid, sympathy and comfort to said Mary B. Cullumber, but that by

reason thereof there was no undue or improper influence exercised over her at said or any time.

Admits that he does make some claim in and to the said described premises adverse to the right, title and interest of plaintiff as such administrator, and the character and nature of said claim will be more fully set forth hereafter in this answer.

As to the second cause of action set forth in said Complaint, and answering the second paragraph thereof, defendant

I.

Admits that on the 18th day of October, 1909, said Mary B. Cullumber was the owner in fee and entitled to the possession of the property described in said paragraph, and that on said day she made and executed a certain instrument known and designated [600] as a quitclaim deed, conveying to the defendant herein the said property; but denies that said conveyance was made for a nominal consideration of Ten Dollars, and denies that said conveyance was made with the understanding and agreement, or any understanding and agreement, between herself and this defendant that said instrument should not take effect until after the death of said Mary B. Cullumber; and denies that said Mary B. Cullumber in the executing of said instrument intended thereby to dispose of said property after her death; and denies that it was not her intention or purpose to vest the defendant with the title to said property or any interest therein until after her death; and alleges that said conveyance was so made for a good and valuable consideration greatly

in excess of said Ten Dollars, which will more fully appear hereafter in this answer; and alleges that at the time said Mary B. Cullumber executed said instrument, she intended that said instrument should take effect immediately upon its delivery upon said 18th day of October, 1909, when said deed was delivered to this defendant by said Mary B. Cullumber, and that it was her intention and purpose to immediately vest in this defendant the title to said property and all interest therein.

Defendant admits that he makes some claim in and to said premises adverse to the right, title and interest of the plaintiff, to wit: that he is the owner thereof by reason of the conveyance described in said cause of action, as will more fully appear hereafter in this answer.

As to the third cause of action and the second paragraph thereof, defendant

I.

Admits that on the 18th day of October, 1909, thirteen days before said Mary B. Cullumber died, she was the owner in fee and entitled to the possession of the property described in said paragraph. Denies that on the 18th day of October, 1909, or at [601] any other time, said Mary B. Cullumber was or for a long time prior thereto had been a very sick woman both in mind and body; and denies that she was old and decrepit and was then or for any time prior thereto had been confined to her bed because of her mental infirmities, and thereafter remained confined to her bed up to the time of her

death by reason of any mental infirmities. Denies that by reason of her said sickness her mind was weak and incapacitated to such or any extent that she was not capable of knowing and *and* comprehending what she was doing; and denies that on said day this defendant fraudulently or in any other improper manner taking advantage of the alleges incapacity, illness and weakness of mind of said Mary B. Cullumber, procured her to sign a pretended deed of conveyance purporting to convey to said defendant the land described in said paragraph. Denies that said Mary B. Cullumber's mind was in any weakened condition because of any illness or descrepitude, and denies that she did not possess mental capacity to contract, and denies that said deed was therefore or for any reason absolutely or in any manner void.

Defendant denies that said deed was executed to the defendant without any consideration whatever, but alleges that there was a good and valuable consideration for the making of said deed to this defendant, as will more fully appear hereafter in this answer. Denies that defendant and the wife of this defendant, or either of them, the said Mary B. Cullumber being old and infirm, sick and incapacitated, visited her sick bed and by proffering aid, sympathy and comfort to said Mary B. Cullumber, secured or exercised undue or any improper influence over the said deceased; and denies that while the said deceased was mentally incapacitated or under undue and sinister or any improper influence of said defendant and the said Jessie M. Shute, his

wife, or either of them, she was fraudulently or in any improper way induced to sign said deed. Alleges that said Mary B. Cullumber at [602] said time was not incapacitated to transact business affairs and make contracts, nor was she at said time under undue and sinister or any improper influence of defendant or Jessie M. Shute, his wife. And further alleges that defendant and his said wife did proffer aid, sympathy and comfort to said Mary B. Cullumber, but that by reason thereof there was no undue or sinister or improper influence exercised over her at said or any time.

Admits that he does make some claim in and to the said described premises adverse to the right, title and interest of plaintiff as such Administrator, and the character and nature of said claim will be more fully set forth hereafter in this Answer.

As to the fourth cause of action set forth in said Complaint and the second paragraph thereof, defendant

I.

Admits that on the 18th day of October, 1909, said Mary B. Cullumber was the owner in fee and entitled to the possession of the property described in said paragraph, and that on said day she made and executed a certain instrument known and designated as a warranty deed, conveying to the defendant herein the said property; but denies that said conveyance was made for a nominal consideration of Ten Dollars, and denies that said conveyance was made with the understanding and agreement, or any understanding and agreement,

between herself and this defendant that said instrument should not take effect until after the death of said Mary B. Cullumber; and denies that said Mary B. Cullumber in the executing of said instrument intended thereby to dispose of said property after her death; and denies that it was not her intention or purpose to vest the defendant with the title to said property or any interest therein until after her death; and alleges that said conveyance was so made for a good and valuable consideration greatly in excess of said Ten Dollars, which will more fully appear hereafter in this Answer; and alleges that at the time said Mary [603] B. Cullumber executed said instrument, she intended that said instrument should take effect immediately upon its delivery upon said 18th day of October, 1909, when said deed was delivered to this defendant by said Mary B. Cullumber, and that it was her intention and purpose to immediately vest in this defendant the title to said property and all interest therein.

Defendant admits that he makes some claim in and to said premises adverse to the right, title and interest of the plaintiff, to-wit: That he is the owner thereof by reason of the conveyance described in said cause of action, as will more fully appear hereafter in this Answer.

WHEREFORE, defendant having fully answered, prays that he go hence without day and with his costs.

ROBT. E. MORRISON,
Attorney for Defendant.

And for a further separate and other answer to said Complaint and each and every cause of action therein set forth, defendant alleges:

I.

That the Mary B. Cullumber, deceased, mentioned in said Complaint, was the aunt of the wife of defendant, Jessie M. Shute, who is mentioned therein, and also of Walter Smith, a brother of said Jessie M. Shute, and of Arthur Small and Adah Small, the step-brother and sister, respectively, of said Jessie M. Shute; the said Adah Small being now married and her name being now Adah Gillespie. That at all times during the life of said Mrs. Mary B. Cullumber the relationship between her and the said Jessie M. Shute and Walter Smith was more like mother and children than like aunt and niece and nephew.

II.

That for many years prior to the death of said Mary B. [604] Cullumber, said Jessie M. Shute resided with her in the City of Prescott and the said Mary B. Cullumber was almost entirely without means for her support. That said Jessie M. Shute secured employment in various capacities and for three years was a teacher in the Normal School at Tempe, Arizona, where she resided with the said Mary B. Cullumber and the two children Arthur and Adah Small, and as this defendant is informed and believes gave to said Mrs. Mary B. Cullumber her entire earnings for her support, which earnings were put back into the Prescott property described

in said Complaint, after the deduction of their living expenses. That this continued until the marriage of said Jessie M. Shute to the defendant several years ago. That shortly after said marriage the said Mary B. Cullumber came to the town of Globe, the residence of this defendant and his wife, and resided with them several months and then returned to her home in Prescott, and shortly after this the said Mary B. Cullumber began writing to defendant and his wife, telling how hard it was to make both ends meet, that her property in Prescott, being the same described in the Complaint, rented poorly, and that the expenses, taxes, assessments and other matters in connection with said property kept her in such financial condition that she had very little to live upon. That this defendant and his wife continued from time to time to send to said Mary B. Cullumber sums of money for her support and clothing, and that this continued on down to the summer preceding the death of said Mary B. Cullumber, and that during said last-mentioned summer defendant and his wife sent to said Mary B. Cullumber Fifty Dollars to pay her way to Los Angeles, where she met the wife of this defendant and was supported by her while she remained in Los Angeles. That at that time in Ocean Park, California, said Mary B. Cullumber stated that she could not manage to keep her property expenses up; that the city was demanding the installing of a sidewalk which she was unable to [605] have done, and she then requested the wife of this defendant to take the property and put in this side-

walk and assume the management and ownership of the said property. That the said Mary B. Cullumber then returned to Prescott and shortly thereafter defendant and his wife were advised that the said Mary B. Cullumber was in a low state of health, and that said defendant and his wife immediately left for Prescott and found the said Mary B. Cullumber at the Mercy Hospital in Prescott. That on the day after their arrival in Prescott, the said Mary B. Cullumber repeated to this defendant what she had stated to his wife the previous summer, to-wit: that in her old age she could do nothing with the property, that she was unable, and has been unable the whole preceding summer to do her ordinary household duties, and stated that it was her desire to stay with the defendant and her niece, the wife of said defendant and her said nephew Walter Smith, as she chose, and that she would deed to this defendant her property in Prescott, being the same property described in the Complaint herein, if he would attend to the construction of said sidewalk in front of said property, and she be given a home as above set forth; and that in this way she could compensate this defendant and his wife for moneys which they had paid her, off and on, during several years prior thereto for her support and benefit, and at this time she spoke of the tender and loving way in which the wife of this defendant had for many years cared for and aided her, both by her affection and with money which the said wife of this defendant had earned and paid over to her. That thereupon, this defendant, his wife being present

during all of said conversation, agreed to the proposition made by said Mary B. Cullumber, above stated, and at her special request the deeds described in the Complaint herein were prepared and presented to the said Mary B. Cullumber for her signature, and she, knowing the contents of said deeds and that the same transferred the title of [606] the property described therein to this defendant, being the same property described in the Complaint herein, signed, executed and acknowledged the same in the presence of and before Allen Hill, a Notary Public of Yavapai County, Arizona Territory. That from the time of this defendant's arrival in Prescott as above stated, and during all the time thereafter and when the said Mary B. Cullumber signed and executed said deeds, she, the said Mary B. Cullumber, although physically weak, was mentally strong; that her mind was sound and clear and she understood what she was doing in signing the said deeds, and that at said time she had full capacity and was capable in every way of transacting business, making contracts, and especially making the deeds described in the Complaint, and that said Mary B. Cullumber continued in a sound and capable mental condition to within a week of her death. That upon the making and execution of said deeds and the acknowledgment of the same before said Notary Public, the said deeds were delivered by said Mary B. Cullumber to this defendant, were received and accepted by him, and thereupon the title to said property immediately passed to this defendant and has continued to remain in

this defendant from said time down to the date of the making of this Answer.

III.

Defendant further alleges that at the time of the making and delivery of said deeds to him, it was the intention of said Mary B. Cullumber that the title to said property should immediately pass to him, and that there was no understanding or agreement of any character between said Mary B. Cullumber and this defendant that the title to said property should not pass until after the death of said Mary B. Cullumber.

IV.

That while the consideration named in each of said deeds is the sum of Ten Dollars, the actual consideration was for [607] and on account of large sums of money paid over by this defendant to said Mary B. Cullumber for her support, and also by the wife of this defendant for a like purpose, and a further consideration was the love and affection between the wife of this defendant and the said Mary B. Cullumber.

WHEREFORE, this defendant prays judgment that the deeds described in said Complaint were made and executed by said Mary B. Cullumber while she was in a sound mental condition and for a good and valuable consideration, and that no undue or improper influence was exercised over the said Mary B. Cullumber by this defendant or his said wife, and that said deeds were properly and

legally made, executed and delivered to this defendant by said Mary B. Cullumber, and that thereupon this defendant became the owner of the property described in plaintiff's Complaint; and that he have judgment for his costs and such further relief as to the Court may seem meet and equitable in the premises.

ROBT. E. MORRISON,
Attorney for Defendant.

Territory of Arizona,
County of Gila,—ss.

G. W. Shute, being first duly sworn, deposes and says, that he is the defendant in the above-entitled action; that he has read the foregoing Answer and knows the contents thereof, and that the denials and allegations of fact therein stated are true in substance and in fact, except as to those matters stated on information and belief and as to those he believes them to be true.

G. W. SHUTE.

Subscribed and sworn to before me this 29th day of November, A. D. 1910.

[Seal] ROSE McGRATH,
Notary Public.

My commission expires March 7th, 1914. [608]

Said answer shows service accepted by Ross & O'Sullivan, attorneys for plaintiff, December 2, 1910, and that it was filed by the Clerk of the Court on December 3, 1910.

Creditor's Exhibit No. 30 admitted in evidence consists of a warranty deed from G. W. Shute and

his wife, Jessie M. Shute and Arthur Small, all of Globe, Gila County, Arizona, and Adah Ray Gillespie, formerly Adah Ray Small, of Los Angeles, California, to John H. Robinson of Prescott, Arizona, conveying for a consideration of $1500.00 property in the city of Prescott, Yavapai County, Arizona, described as follows: Commencing at a point being, the S. W. intersection of Gurley and Mount Vernon Streets in said city of Prescott, running thence south along the west side of Mt. Vernon street to a point 150 feet, thence west at right angle to the said Mt. Vernon St. 150 feet thence east along the south side of Gurley street 50 feet to the point of beginning. Said deed is dated October 4, 1916. Acknowledgments follow. [609]

ifTRANSCRIPT OF TESTIMONY OF BANKRUPT GIVEN BEFORE REFEREE IN BANKRUPTCY.

Before Honorable R. W. SMITH, Referee in Bankruptcy.

(Title of Court and Cause.)

The first meeting of creditors in the above matter was held at the office of the referee in bankruptcy, in Phoenix, Arizona, at the hour of 10:30 o'clock A. M. Tuesday, May 1st, 1928, there being present the bankrupt, George W. Shute, his attorney, Orme Lewis, Esq., and Miss Alice M. Birdsall, representing the claim of J. J. Mackay.

The REFEREE.—The claim of J. J. Mackay in the amount of $31,343.81 being the only claim filed,

represents a majority in number and amount of claims, and will therefore be entitled to name the trustee. Whom do you wish to name as trustee, Miss Birdsall?

Miss BIRDSALL.—I nominate Mr. Thomas W. Nealon, as trustee.

The REFEREE.—Do you wish to have the trustee present?

Miss BIRDSALL.—I think he should be present.

Further proceedings await the arrival of Mr. Nealon, who is present during the remainder of the hearing.

Miss BIRDSALL.—I do not know what is customary in fixing the amount of the bond, as to what the amount should be.

The REFEREE.—The assets shown in this matter amount to $250.00, above exemption. I should think $500 would be ample; I will fix the amount of the trustee's bond at $500.00. [610]

Miss BIRDSALL.—I would like to make a motion before the examination begins. On page 3 of the schedule in which the claim of Mr. Mackay is listed,—this is not made in conformity with the Bankruptcy Act. The Act requires a statement as to the nature of the claim, and the consideration, whether a promissory note, judgment, etc. The Bankruptcy Act is quite specific about this matter, and I move to have the Schedule amended to conform to the Bankruptcy Act.

The REFEREE.—The nature of the indebtedness should be shown. The bankrupt can amend

(Testimony of George W. Shute.)
that,—it is page 3 of Schedule "A"—to conform to the requirements of the Bankruptcy Act.

TESTIMONY OF GEORGE W. SHUTE, BANKRUPT.

GEORGE W. SHUTE, the above-named bankrupt, was duly sworn by the referee, and gave the following testimony.

(Examination by Miss BIRDSALL.)

Q. Mr. Shute, in this claim you have scheduled, some thirty-one thousand odd dollars as due Mr. Mackay; what is the nature of that claim?

Mr. LEWIS.—I don't think it is important to go into that, since it is admitted.

Miss BIRDSALL.—It is very important to us.

A. It is a promissory note.

Q. Owing by you to Mr. Mackay.

A. The schedule so states.

Q. That amount is due by you to Mr. Mackay?

A. According to the note, yes.

Q. In the suit which Mr. Mackay filed against you, a copy of the complaint in which suit is hereto attached, it is charged that you received the consideration for [611] the original note of $20,000; is that true?

A. Well, that is rather a hard matter to answer, yes or no. I received a consideration—

Q. The original consideration was $20,000, was it not?

A. That is what the petition states; my under-

(Testimony of George W. Shute.)

standing is that it was $17,000, if I remember correctly, as a consideration for the whole transaction, which was stock.

Q. You state that the consideration was stock; was that the original consideration?

A. No, the note was given for the purpose of obtaining the purchase price for the stock.

Q. That was obtained from the Gila Valley Bank, was it not? A. Yes.

Q. That money was paid over to you by the Bank? A. No.

Q. How was it paid? A. I don't know.

Q. You state some stock was bought; what stock was that? A. Iron Cap.

Q. How much? A. A thousand shares, I think.

Q. Who did buy the stock?

A. I don't know; I don't know whether it was bought by Mr. Mackay or not.

Q. No orders were placed by you with the Wilson Brokerage Company?

A. I don't recall who placed the order. It was placed by Mr. Mackay or the Bank; I don't know which, but I would prefer to say it was the bank.

Q. You are sure you did not place any order yourself?

A. I am as sure as a person could be of anything after that lapse of time; I have no recollection of it now. [612]

Q. Did you ever buy any Iron Cap stock yourself, outside of that?

A. I believe I did, a small block; I don't know,

(Testimony of George W. Shute.)

the exact amount; it was just immediately before or immediately after that.

Q. That had nothing to do with the stock pledged as security for this note?

A. No, that was separate altogether.

Q. Do you remember the year? A. No.

Q. Do you remember the amount?

A. No, but it was a small block,—perhaps $1100, $1200 or $1300; some such amount.

Q. For how many shares?

A. I would say about a hundred shares.

Q. That was never pledged as collateral to this note? A. No.

Q. At the time of the giving of this note and subsequent thereto, did you receive dividends from the stock pledged to the bank? A. Yes.

Q. How much?

A. Well, I will again have to say that my memory is a little faulty, but I think it was paying 75¢ a share in dividends.

Q. Monthly, or quarterly, or how?

A. It seems to me it was quarterly, but it may have been monthly.

Q. The dividends were large, then?

A. They were very large for a while; they finally dropped to 50¢; then to 25¢, and finally was eliminated altogether. That is my recollection of it. [613]

Q. You received these dividends? A. Yes.

Q. This amount was not paid on the indebtedness of the Bank?

(Testimony of George W. Shute.)

A. Part of it was; I forget how much, but it was paid on the interest.

Q. Do you recall the amount? A. No.

Q. Can you give it approximately?

A. Well, I think the interest was paid in full on the note out of the first, second and probably the third dividend at that time.

Q. For how long a term would it pay for?

A. That would depend entirely on when the dividend came in; if monthly, the interest was paid monthly; I cannot remember it very clearly.

Q. Do you think it paid a year's interest on the note? A. No.

Q. Merely a few months, you mean?

A. I think so; those dividends dropped off very quickly.

Q. Have you any record books showing this transaction?

A. No, I kept no books of it at all; just what was kept at the bank; I have no record of it myself.

Q. What became of the stock eventually?

A. I don't know.

Q. Presumably it was sold by the bank?

A. I presume so; it was pledged to the bank as collateral.

Q. Regarding the assets which you have scheduled, I notice here "Real Estate in Globe of the estimated value of $250.00." Is that vacant property? A. Yes. [614]

Q. Where is that located? As regards streets?

A. It is between Sycamore and Oak, the street

(Testimony of George W. Shute.)

that goes up past the courthouse; it lies in the canyon after the road goes up over the hill.

Q. Is it back of Mr. Fisk's property?

A. It is much further up the *wash* than the Fisk property.

Q. Could it be sold for $250.00?

A. I doubt it, now; there is very little demand for anything of that kind at the present time.

Q. You scheduled no other property in Globe?

A. No, there is no other property there except the place we lived in at Sycamore and First.

Q. That is in Mrs. Shute's name?

A. That is her property; she got it about 1919.

Q. Was it purchased with her own funds?

A. It was purchased with funds she obtained,—except for a very small balance—from the sale of some property she had at the corner of Gurley and Mount Vernon Streets, in Prescott.

Q. That was her property there?

A. That was her separate property.

Q. This balance that you speak of, outside of what she received from the sale of this property in Prescott, what was that?

A. That was paid partly by myself and partly by her out of money she had saved out of her housekeeping allowance; it is not all paid yet.

Q. How much is still due?

A. I am not certain; I should say approximately $700 to $1,000. [615]

Q. Then at the time of the payment of this balance made by you and her out of her housekeeping

(Testimony of George W. Shute.)

money, that was subsequent to the incurring of the indebtedness to Mr. Mackay, was it not?

A. I think so; I think this transaction with the Bank was in 1917, or it might have been 1918, and I think the property was purchased after that.

Q. Then the amount you paid in was from community funds?

A. Yes, that would be community funds.

Q. What was the amount, approximately.

A. Well, it is pretty hard for me to say; it was paid in little small amounts from time to time, and I don't know; I think I could probably get the amount, however.

Q. What is the value of that property?

A. Well, I don't know, exactly.

Q. What do you consider the property worth at the present time, just approximately?

A. I should say $5,000.

Q. Of the amount of the purchase price for this property, do you think you paid as much as $1,000?

A. Yes, I think I did?

Q. More than that?

A. I might have paid a little more than that.

Q. As much as $2,000? A. I don't think so.

Q. You say there is some indebtedness on it at the present time? A. Yes.

Q. Do you know the amount?

A. Between $700 and $1,000.

Q. To whom is that owing?

A. Mary E. Holmes.

Q. Does she live in Globe? [616]

(Testimony of George W. Shute.)

A. No, she lives in Massachusetts.

Q. This indebtedness is represented by mortgage?

A. Yes.

Q. Did you ever convey to Mrs. Shute your interest in that property? A. No.

Q. Have you never made a deed to your interest in it? A. No.

Q. Your household furniture, etc., that you have scheduled here; where is that located? A. Here.

Q. Where are you living now?

A. At #66 W. Lynwood Street.

Q. You don't own that property there?

A. No.

Q. Does Mrs. Shute own it? A. No, we rent it.

Q. Your law library that you have scheduled for $750; where is that located?

A. In my office in the National Bank of Arizona Building.

Q. I notice you do not schedule any book accounts in your profession as an attorney; have you any accounts due you, in any way, shape or form?

A. That depends entirely upon the terms of my partnership agreement; the agreement takes care of that.

Q. You do not schedule any interest as a partner; are you a partner? A. Yes.

Q. What are the terms of your partnership?

A. I have a copy of the agreement in my pocket if you want to see it. [617]

Q. I would like to see it.

(Agreement handed to counsel.)

(Testimony of George W. Shute.)

A. I may say here that he have offered our house in Globe for sale for $5,000, but have never been able to obtain it.

Q. This partnership agreement was entered into about a year ago? A. The date shows it.

Q. Then you have an interest in all business coming in to the firm since that date? Did you have any interest prior to that date?

A. Prior to that agreement, you mean? Well, when I went in that was an old firm, and they had a lot of business that was overlapping; they put me in on that date on an equality with all the business; in other words, the business coming in then, I got my share, and my understanding was that if I went out of the firm, my income would cease at that date; they figured that this would take care of the business overlapping at the beginning.

Q. When did you enter into the prior agreement?

A. I don't remember.

Q. You came here in January, 1923, did you not?

A. Yes.

Q. You were on a salary then? A. Yes.

Q. How much was that? A. $5,000.00.

Q. How long did that arrangement continue?

A. One year.

Q. At the end of that time you became a partner?

A. Yes. [618]

Q. Then your partnership agreements have extended from January, 1924,—various agreements?

A. That is my understanding, or my recollection.

(Testimony of George W. Shute.)

Q. Since that time how much have you received from the firm's business?

A. Well, I can only give an approximation, but I think it is pretty close. I think the first year I received about $5500; that was 1924; in 1925 I received between $5500 and $6,000; I think in 1926 it was about $8,000; I think the last year I received somewhere in the neighborhood of $10,000; that is about right, I think.

Q. You have no books available?

A. The firm books show my earnings.

Q. You scheduled no cash in banks except $15.67; is that right? A. On that date, yes.

Q. That was on the date the schedule was filed?

A. Yes.

Q. How much have you drawn from the firm since the first of the year?

A. I think about $500 a month; there has been no dividend in April.

Q. At the time you made this petition, had you drawn the money coming to you up to the first of April?

A. No, I don't think I had; I think there was a little difference between the last dividend and the date of the dividend.

Q. These dividends are declared monthly, are they?

A. No, they are declared when the money comes in; sometimes there are two or three dividends in a month, and then sometimes there will be only one in two or three months. [619]

(Testimony of George W. Shute.)

Q. In addition to the dividends there is always a considerable amount on the books, isn't there, of business accr*y*ing?

A. I suppose there might be; I don't know. Fortunately for us, most of our clients pay very promptly; there are some who hang over, but not a great many.

Q. Of this amount that you have been receiving since you came here in 1923, how much have you expended?

A. In very many different ways. Living expenses are very high.

Q. How much do they run?

A. Well, we pay $75 a month rent; then there is the water, lights, gas, etc., Mrs. Shute takes care of the household expenses; I give her a certain amount, or an un*d*ertain amount,—and she pays them out of that.

Q. How much would you say, approximately?

A. I would rather not say, because it would only be approximately, but I should say somewhere around $200 a month, to $250.

Q. If you have been drawing approximately $500 a month what have you done with the balance?

A. I think I have drawn practically all of it by check and my check stubs would show that; they would answer that question better than I could.

Q. Has it been expended in investments?

A. No, I don't believe I have expended any of it in investments; most of it has gone to the payment of accounts.

(Testimony of George W. Shute.)

Q. You mean in the payment of past indebtedness? A. Yes.

Q. What amount of past indebtedness have you taken up since you came to Phoenix? [620]

A. I have taken up about $2200 or $2300 of the Old Dominion Bank.

Q. How much did you owe them?

A. I owed them about $3,000.

Q. They made you a discount?

A. Yes, the difference between what I owed and what I paid; I paid them between $2200 and $2300.

Q. What other accounts did you owe?

A. Well, I can't answer that offhand; of course these larger amounts stand out in my mind.

The REFEREE.—Did you owe any other bank?

A. No, I don't believe I did.

(Examination by Miss BIRDSALL Resumed.)

Q. What other large amounts do you recall that you owed?

A. I don't recall any other large amount just now.

Q. Was all of this indebtedness in Globe, or some of it in Maricopa County?

A. Practically all of it in Globe. I have not incurred any bills in Phoenix to amount to anything, except current bills.

Q. You have not made any investments in that time? A. No, I don't think of any.

Q. Have you any interest in any property in Globe, direct or indirect, outside of the interest you have in this house you mentioned?

(Testimony of George W. Shute.)

A. Nothing except what I have described.

Q. You have no interest in any mining property?

A. None at all.

Q. Any mining claims? A. No. [621]

Q. Have you represented any companies over there in any way as counsel from whom you have received fees since being in Phoenix?

A. I cannot think of any; it would be on the books here if I have.

Q. You have received nothing that would not show on the books of Armstrong, Lewis & Kramer?

A. I don't think so.

Q. From Globe companies or from interests you have there? A. I don't think so.

Q. You have a car at the present time, have you not?

A. I bought a car when I came down here, a Hudson, from my brother-in-law, and I paid $100 a month on it until it was paid for; then I traded it in on another car, from England, and then traded that in on another one, which is the car I have now; there is probably $1,000 due on it; it hasn't been carried in a finance company; he carried it.

Q. When did you purchase that?

A. If I remember right it was in October of last year.

Q. What was the purchase price? A. $1765.00.

Q. What did he allow you on your old car?

A. It seems to me he allowed me about $600.

Q. That would leave about $1150 due on the car?

A. About that.

(Testimony of George W. Shute.)

Q. Have you paid anything on it since?

A. Some small amounts; that has been covered mostly in work I did for him; that is why it is hard for me to say what the amount is.

Q. You have some interest in it at the present time?

Q. Well that depends on the conditions of the sale contract. [622]

Q. You did not schedule it?

A. I turned it back.

Q. The car is not in your possession?

A. No, I turned it back to England.

Q. I notice by the records that on the 7th of April, the day this complaint was served on you, you made a chattel mortgage covering that car with the National Bank of Arizona for $750.00. What was the nature of that loan?

A. I don't know just what you mean.

Q. What became of the $750?

A. There had been no dividend coming in; the bills were due and I borrowed this $750 from the bank to pay my expenses; I have a record of what I spent it for.

Q. You did that to cover other indebtedness?

A. As far as I could.

Q. You preferred other creditors, then, to Mr. Mackay? A. No, not at all.

Q. You used this to pay indebtedness?

A. I paid current bills, for rent, water, lights, etc.

Q. That did not take $750?

(Testimony of George W. Shute.)

A. That and the other matters I paid did.

Q. You still owe the bank $750? A. I do.

Q. Why didn't you schedule that?

A. Because I didn't propose to have the bank take any loss.

Q. But you do owe the bank?

A. I owe it $750.00.

Q. When you took your oath that this was all you owed, it did not include this, then; it was not entirely true? [623]

A. I did not so understand it.

Q. The oath says you are to schedule every debt?

A. I did not understand it was necessary for me to schedule every debt; I understood that was a matter for the creditors themselves.

Q. Is this schedule incorrect in any other particulars as representing your assets and liabilities?

A. I think it is. I think there is a little block of stock in the New Dominion, about 700 shares, I think; I have mislaid or lost the certificate, but I think I own a little block of stock.

Q. The records of the New Dominion would show that, wouldn't they?

A. I have some doubt about it for this reason. This block of stock was obtained as a fee; that block of stock was presumably broken up and each member received his share; we treated it as cash; I don't know whether it was issued to me in person, or to some other member of the firm, but I think it was probably issued to me, inasmuch as I handled the whole transaction.

(Testimony of George W. Shute.)

Q. The books of Armstrong, Lewis & Kramer office would show that?

A. Yes, that would straighten it out; they might even show just how it was handled.

Q. Are there any other matters in this schedule that are incorrect? A. Not that I know of.

Miss BIRDSALL.—I move that the bankrupt be required to amend his whole schedule to conform to the act. He says he did not have to schedule all of his debts; it is my understanding that he does. [624]

A. You asked about any other large amount I paid. When my father was sick I gave mother about a thousand dollars; then at another time I gave her a hundred, and then another hundred; that would be $1200.00.

Q. When did you pay that?

A. About a week or ten days before my father died; he died about the 15th or 16th of September, 1926; I gave her the $1,000 and the two amounts of $100 each later.

Q. Can you think of any other large amounts you paid since coming to Phoenix?

A. No, I cannot think of any others just now.

Miss BIRDSALL.—I would like to have this meeting continued until the books can be gone over, as these things will have to brought in.

The REFEREE.—I think it would be better to file an entirely new schedule, as this is short; have it include these omissions.

(Testimony of George W. Shute.)

(Examination resumed by Miss BIRDSALL.)

Q. Of this $750 you borrowed, you paid Mr. Lewis $100?

A. I am not sure; that may have come out of a subsequent dividend.

Q. You have received one dividend since this was made?

A. No, I cannot tell whether the last dividend was on February 28th or April 2d, but it was one or the other.

Q. Have you carried any other bank accounts in the last several years, other than the one in the National Bank of Arizona? A. No. [625]

Q. You have no bank account in Globe?

A. No.

(Examination by THOMAS W. NEALON, Trustee.)

Q. The law provides that your books are to be turned over. Have you any personal books of account showing your income?

A. Those books are all kept by the firm.

Q. You keep none individually? A. No.

Q. You have no books showing receipts from the firm and personal disbursements.

A. That is carried on the books of the firm. Then as I am paid I ordinarily give enough to Mrs. Shute to take care of the household expenses and deposit the balance and check it out.

Q. And you have no books showing your receipts and disbursements?

A. None except as I have told you.

(Testimony of George W. Shute.)

Q. You have nothing to show the amount of your receipts and deposits?

A. No, the deposit book would not show that correctly, but the Armstrong, Lewis & Kramer books will show.

Q. The firm books will show everything that you have received?

A. Yes, that is my source of income.

Q. From what books of account will your personal disbursements show?

A. They will only be shown by the checks I have drawn on my account.

Q. Will your checks or stubs show the persons to whom the amounts were paid and the purpose for which they were paid? [626]

A. They might not show the purpose. I put on the amount, the number of the check and the name; but there is hardly a one I would not remember what it was for.

Q. Have you the stubs? A. Yes.

Q. This property in Globe you mentioned, is the deed of record?

A. Yes, and I think I have the old deed.

Q. You list $100 as paid to Mr. Lewis for professional services in connection with this bankruptcy matter. Am I to understand that just prior to the filing of this bankruptcy schedule you had in the bank the sum of $115.67?

A. No, I hardly think that *toulw* be correct, as I paid Mr. Lewis in cash.

(Testimony of George W. Shute.)

Q. Then your checks will not be a complete account of your disbursements?

A. There may be a little deviation, but very little.

Q. Your schedule is dated the 17th of April. Your last dividend was how long before that period?

A. I cannot tell you exactly, but I should say a couple of weeks.

Q. At that time did you draw your part of all the fees collected?

A. I didn't draw it, if you mean I could go and make application for it. We don't do it in that way. These dividends are declared as the money comes in; it is really the bookkeeper who makes the distribution.

Q. You list no accommodation paper?

A. I am on no accommodation paper.

Q. There is no liability on notes or bills discounted? A. No. [627]

Q. Now this J. J. Mackay claim,—I believe you stated that you did not know by whom the order for the stock was placed at the time of its purchase?

A. That is right.

Q. Do you know through what broker it was purchased?

A. No, only by presumption; there was only one brokerage firm there, and that was Wilson & Company.

Q. You personally gave no order?

A. My recollection is that I did not.

Q. Do you recall whether you gave any order for the sale of it? A. I know I did not.

(Testimony of George W. Shute.)

Q. When you received the consideration for the note, was it placed to your credit in the bank?

A. No.

Q. It never became a part of your account?

A. No.

Q. It was never placed in your hands in money?

A. No.

Q. You never received the consideration into your hands? A. No.

Q. Do you know by whom that transaction was handled at the bank? A. Yes.

Q. Who was it? A. Mr. Mackay.

Q. You did not go with him to the bank?

A. No.

Q. Did he bring you any receipted vouchers in connection with it? Anything showing the consideration to you? A. No. [628]

Q. Was any receipt given for the stock held by them? A. I don't think so.

Q. Do you recall whether you signed the note in the usual form for that obligation?

A. It was in the usual form.

Q. Did it carry a pledge sale clause?

A. It may have, but I don't think so.

Q. Do you recall the circumstances of the sale at all?

A. No, I know nothing at all about the sale.

Q. Did you know anything about the sale prior to it?

A. I didn't know anything at all about it.

(Testimony of George W. Shute.)

Q. You were not notified before any sale of the pledge was made?

A. No, I don't know of my own knowledge that the sale has ever been made.

Q. Do you recall whether the note you signed at that time recited anything about the collateral being pledged? A. No.

Q. You think it was the ordinary form of collateral note? A. That is my recollection.

Q. After the sale was made, did you receive from the bank any statement of the sale and the balance?

A. I never received a statement.

Q. And you never received a statement from any broker afterwards? A. No.

Q. So that unless the authority to sell was in the note itself, there was none given by you for the sale of the stock? A. No. [629]

Q. You list state and county taxes on the property located at Globe as approximately $45.00; was that for one or more years?

A. That was for three years, I think.

Q. Does it include the taxes alone on that piece of property, or are other taxes included?

A. I don't think so.

Q. Then the $45.00 represents taxes on that one piece of property?

A. I think nothing else is included; I may be in error in that, but I don't think so.

Q. You will understand, Mr. Shute, that this examination is merely for the information of the trustee? A. I understand.

(Testimony of George W. Shute.)

Q. Your copartnership agreement in the law firm of which you are a member is dated the 2d day of May, 1927; was that the actual time of the agreement between you, or was it made prior to that time, and just then reduced to writing.

A. I think this was the agreement which was entered into immediately after Judge Lewis' death; it was to take effect from the 1st of April, 1927.

Q. Since the first of April, 1927, there must be a considerable amount of fees due the firm which have not yet been collected, must there not?

A. There are some, I presume.

Q. Can you give us an idea of the approximate amount?

A. I have never examined the books. We have a most excellent bookkeeper; she takes care of those things, and they are checked by Mr. Armstrong and Mr. Kramer. [630]

Q. Is it customary to furnish the members of the firm with statements? A. Yes.

Q. Do you recall ever having received any since the date of this agreement? A. Yes.

Q. Have you those in your possession now?

A. Yes.

Q. Will you furnish them?

A. I will be glad to; our bookkeeper will furnish you with a complete list of them if you wish; she strikes a balance every three months, I think.

Q. I would like to have the first, if any, that have been rendered to you, and I may call upon you for the others later. Now on the 1st of April, 1927,

(Testimony of George W. Shute.)

there was a balance sheet prepared showing the assets of the firm of Armstrong, Lewis & Kramer, of which you were then a member. Is that true? I mean the old firm, at or about the time the firm was dissolved.

A. I think it must be true; it seems to me there was a report about that time.

Q. If you have that in your possession I would like to have a copy of it. I mean *the that* was rendered to you personally. A. I see.

Q. What was your interest in the old firm, the percentage interest, I mean.

A. It seems to me that the first agreement was one that called for 12½%; then it seems to me there was a subsequent one calling for 15%, and then this one.

Q. Were these in addition to a salary?

A. No. [631]

Q. Prior to your becoming a member of the firm you were on salary, you stated? A. Yes.

Q. After that you went on a percentage basis?

A. Yes.

Q. Might I ask, merely for purposes of comparison, what was Judge Lewis' percentage in the old firm?

A. I think 35%; it was 36% at the time of the dissolution and of his death.

Q. My information is that the inventory filed in the estate of Judge Lewis called his interest in that firm worth the sum of $30,000; do you know whether that is correct? A. I don't know.

(Testimony of George W. Shute.)

Q. Do you know whether that would represent a fair value of his interest in the firm.

A. It might have done so, because of his long connection with it; because of his own personal interest; that would be purely problematical on my part. He had many connections with the copartnership that I did not have at all.

Q. You mean that prior to that time he had interests in the firm that might have been included in that valuation, and you did not know the actual value of it?

A. I meant because of his personal connections.

Q. At the time of this dissolution there were some large cases pending, were there not?

A. When Judge Lewis died?

Q. Yes.

A. There might have been quite a bit.

Q. I will call to your attention especially the big irrigation case, on which Judge Lewis was engaged, and which it was said really caused his death; I take it that the fees had not been collected in that case at that time. [632] A. No.

Q. You answered Miss Birdsall's question about your adjustment with the old firm in a manner I did not quite understand. Will you state that again, please?

A. Well, of course I would be construing a written contract, and I might be off, but my best recollection of it is this: When I entered the firm in the beginning, it was an old established firm, and there was a lot of business running through it that was

(Testimony of George W. Shute.)

overlapping; on that date they put me in on an equality with all that business. In other words, of the business then coming in, I got my share. When we made the partnership agreement, the arrangement was that in order to take care of that amount, which was considerable, when I would go out of the firm, either by dissolution or in any other way, that my income from the firm would cease at that time, which would take care of the overlapping business in the beginning. Do I make myself clear?

Q. You say that this is your interpretation of a written instrument; will you furnish that?

A. Yes.

Q. Under your construction of the written agreement, there was nothing due you from the old firm at the time this new agreement was entered into on May 2d, 1927.

A. That is my interpretation of it.

Q. You received nothing from the old firm?

A. It was my understanding that I receive nothing from the accounts that came in.

Q. In your answer to Miss Birdsall's question, you have shown a considerable income for the period you have been engaged in the practice of law in Phoenix; for instance, in 1927 your income was approximately $10,000. [633] Can you give an approximate estimate of the part of that that went to living and household expenses?

A. That would be pretty hard for me to do. I

(Testimony of George W. Shute.)

would a lot rather submit the deposit slips and checks; it would be much more reliable.

(Examination Continued by Miss BIRDSALL.)

Q. Have you any deposit boxes anywhere?

A. No.

Q. Have you ever rendered a statement for Martindale's Agency, for your rating? A. No.

Q. And you know what that rating is, do you not?

A. I don't know.

Q. It is from $5,000 to $10,000, is it not?

A. I never furnished any of that to them; I don't know where they got it.

I would like to mention my insurance policy. It is just an ordinary life policy and has no loan value whatever, so I did not list it.

The REFEREE.—It is in one of the old line companies?

A. Yes.

Q. Is it a term policy?

A. It is what is called ordinary life.

Q. Have you every borrowed any money on it?

A. It has no loan value at all. [634]

TESTIMONY OF GEORGE W. SHUTE, BANKRUPT, AT FIRST MEETING OF CREDITORS AS ADJOURNED FROM MAY 22d, 1928, ON TUESDAY, MAY 29th, 1928, AT 10:00 A. M.

(Examination by Miss BIRDSALL.)

Q. On the second page of the amended schedule you have filed, Judge Shute, you have listed a prom-

(Testimony of George W. Shute.)

issory note payable to the First National Bank of Arizona for $750, being secured by chattel mortgage on a Hudson car. The value of the security is not mentioned, but the debt is $750. What is the value of that security? A. Of the car you mean?

Q. Yes.

A. I think the list price of the car is $1765. I have been representing England for two or more years, I guess, and that is the second car I think I have purchased from them. He throws off a certain percentage, the amount of which I do not know.

Q. What amounts have you paid on this car. I think you said you purchased it in September or October, 1927.

A. October, I think it was. I haven't a record of it, but I think it was paid down to about $1200, including his throw-off.

Q. There is a conditional sales contract on this of record? A. Yes.

Q. What is the amount of that contract?

A. $1765.00.

Q. When is that payable?

A. There is no definite date. He always has told me to pay what I can, and when I please.

Q. You have made no payments except the work you have done for him? [635]

A. That is about the way it would figure out. I don't think I made any cash payments at all.

Q. I notice in these cancelled checks which seem to constitute your books of account that there was

(Testimony of George W. Shute.)

a payment on September 2d, 1927, of $250.00. Was that on that car?

A. That was on the car I gave Mrs. Shute a year ago last Christmas.

Q. Where is that car?

A. At the house. The purchase price of that car was about $900, or something like that; it was an Essex; there was no contract on it; it was paid for in full. I think I completed the payments on it this year. I bought it on credit but did not have any conditional sales contract; I bought it from England.

Q. I notice here there is another check dated November 25, 1927, for $250.00; what was that for?

A. Was that another check?

Q. Yes, the other one was dated September 2d.

A. Well, I think that was the way it was paid, in two $250 checks.

Q. This last one of $250—was that applied on the Essex? A. Yes.

Q. Was that a new car? A. Yes.

Q. What was the price of it? A. Around $900.

Q. Then I notice check No. 548 here, dated December 3, 1927, for $995.00; on what was that applied?

A. That calls for a little explanation. He has been throwing [636] off a little percentage on the list price of cars to me. The Wentworths in Globe wanted a new car, and in talking to them I told them about this percentage and they asked me if I could not get them the throw-off on the car they

(Testimony of George W. Shute.)

intended to purchase. I talked with England about it and he said he would do it for me. They bought a new Hudson car, and Mrs. Wentworth gave me $400 and later $900, completing the total purchase price of the car.

Q. Then this $995 you received from the Wentworths?

A. Yes. In other words, there is about $1300 cash payments that don't belong in my checks there at all. It was money they advanced to me to complete the transaction for the car.

Q. When was this car bought for Miss Wentworth? A. I think it was in December.

Q. When did they give you the payment of $400?

A. A little before the $900 payment was made by me. The checks will show the dates exactly.

Q. The check for $900 is dated December 3, 1927.

A. The one before that was the last payment.

Q. I do not find any $400 check to Mr. England—that is in the latter part of 1927. There was one on September 2d for $250 and *on* on November 25th and then this one of December 3d for $995.00.

A. Well, the two $250 checks paid for the little Essex. I am not sure the $400 was paid. I don't know whether I turned over the $400 check to them, or whether I deposited it and then paid it. I am sure of the $900 because that amount came in in cash; I deposited it in cash and checked it out.

Q. You deposited the $900 you received from them to your own account? A. Yes. [637]

Q. Does it show in your bank account?

(Testimony of George W. Shute.)

A. I imagine so. I think I deposited it with another amount of $500 on the same day.

Q. Do you think you could find those statements?

A. I think you have it right there, Judge Nealon.

Q. Here it is.

(Witness examines bank statement.)

A. Here it is (indicating).

Q. That is a different date. Did you issue the check afterwards?

A. No, it was the same date, or else the check was misdated. My recollection is that it was the same day.

Q. This was check No. 548. I have it dated December 3d; perhaps I left the "1" off, and it should have been the 31st. You deposited $1900 on that date? A. Yes.

Q. What was the other amount, the source of it, I mean?

A. That calls for another story. About two years ago, in, October, I was hunting at the head of Canyon Creek. Prior to that time I had drawn an option for a man named Goswick for some mining property. According to the option there was certain property that should go to Goswick if the option was not carried out. While I was out hunting he went out and found to his consternation that they were moving all his property off. He went back and telephoned over to me at the head of the canyon, and asked me to see what I could do. I sat down and wrote out a notice which he took down and served, and stopped them from moving off his property.

(Testimony of George W. Shute.)

Later on he made a deal on this property and he gave me that $500 out of what he received, for what I had done for him. [638]

Q. This $500 was a gift then, Mr. Shute?

A. Absolutely.

Q. It was not in the nature of a fee?

A. Not at all.

Q. This deposit is $1900. You received this $500 and $900 from the Wentworths; where does the other $400 come from?

A. Maybe that is where that $400 is, right there. The amount of the Wentworth check ought to have been right at $365; the purchase price of the car was right at $1400. I think I deposited the $500, and I think I paid the $400 on the car.

Q. Then this $1900 is no part of the receipts which you scheduled as coming from Armstrong, Lewis & Kramer? A. No.

Q. Then in making up your statement of receipts, you have other receipts besides what you received from the firm, then?

A. What do you mean by that?

Q. I mean you have given a statement of your receipts from the firm as being all the money you have taken in. In addition to that, then there should be other amounts that you have received, in order to make the books complete.

A. That depends on the way you look at it. You will remember I told you about the little block of stock we sold after we came down here. There was also a little Mrs. Shute owned in the Iron—Blossom,

(Testimony of George W. Shute.)

I think it was called; there was 100 shares of that. We sold that and I used the money. There may be two or three small instances like that; but except in very small items of that kind, the income was from the firm. [639]

Q. But the books you have submitted up to date are not an accurate statement of your receipts and disbursements.

A. Well, as nearly correct as I can make it, unless I go back and take up matters which are not material. The checks show as nearly as I can give it to you. If it isn't in the deposits, it is in the checks; if not there, then it is reflected in the statement prepared by Mrs. Parry.

Q. How would we have known what this $1900 was from the statements you have submitted. You have submitted a statement as showing your income during that period; how are we to know what other amounts you have received besides that income? How would we have known about this?

A. Well, you see I opened no bank account the first year I was down here. When I received my pay, I paid my bills if I could, out of it, and we ran strictly on a cash basis, and we had no bank deposits. At the beginning of the second year I opened a bank account. I have the letter right here showing the date. The date was January 16th, 1924. When I first began the bank account I had a small check-book, the kind you carry around with you, and that is the reason they don't run straight back to January 16th, the date I opened the ac-

(Testimony of George W. Shute.)

count; I was still using every penny in other things, during 1924, and made no permanent record; but after this date I don't believe there was a thing came in that isn't reflected in these bank statements or checks.

Q. It is reflected in the deposits in the bank, but how are we to know, except by taking up each one of them and asking what it is for, and what is the source of that money?

A. There is no other way. [640]

Q. You see in regard to your checks here, several hundred of them, even from the stubs you have here, are missing.

A. Yes, but the deposits are there, and the checks and stubs are there, or else an entry is made, showing the cash on that particular check.

Q. But it does not show what the money was spent for.

A. There would be no way of showing that. I would simply have to tell you where it came from and how it was expended. If I had anything that showed it I would be perfectly willing to turn it over, but I haven't.

Q. What I am trying to get at is, I am trying to figure out how the books can be checked so they will represent books of account, so you would know your exact income, the amounts disbursed, and what for.

Mr. LEWIS.—During the periods we have those statements, all the income is shown on Mrs. Parry's statement, and the bank statements show the de-

(Testimony of George W. Shute.)

posits. We could check the total of one against the total of the other.

Q. What I would like to know is what amounts you have received outside of that received from the firm, and what other such amounts were deposited that would go into the books.

A. They are all shown here.

Q. I am asking you for the amount.

A. I cannot tell you that,—I don't remember, but I do know they are all in this statement.

Q. Haven't you checked what you have received during that period with what has been disbursed?

A. I tried to; I tried to check them back against the deposits.

Q. What are those amounts; have you the statement here? A. What amounts? [641]

Q. The amounts you received.

A. They are all here.

Q. What is the total of them?

A. I don't know.

Q. You cannot tell what the total is?

A. I believe Mrs. Conger did run up a total, amount of those checks; that should be with the statement and checks.

Q. These checks only go back to November, 1925. You have had a bank account from January, 1924; where are those bank statements?

A. I don't know. During 1924 most of the checking was on a small pocket check-book, and when the statements were sent to me, they would probably

(Testimony of George W. Shute.)

come to my residence address, and we moved frequently; the chances are they are simply lost.

Q. You have made no effort to obtain duplicate statements?

A. No, I haven't asked the bank to do that; I thought if I furnished everything back of 1925, that should be enough.

Q. I believe there was an order to produce, here, by the Court.

Mr. LEWIS.—In answer to that order, we say that we have produced all we have.

A. I have even gone through the house; they are simply not available, and they must have been lost in the way I tell you; we must have moved almost once a year since coming here.

Q. Then your only return to that order is that you have stated you furnished all you could?

Mr. LEWIS.—Yes.

Q. I would like now to get a little straightened out on these cars. You stated in your testimony the other day [642] that you bought a car from your brother-in-law when you came here; what kind of a car was that?

A. It was called a Hudson Speedster.

Q. What was the price of it?

A. It was right at $1100.

Q. Who is your brother-in-law?

A. J. A. Pinyan.

Q. How did you pay for that car?

A. Through a financing concern; some of those checks give the name of the concern; I don't re-

(Testimony of George W. Shute.)

member it; it was written by Mishkin; there are some checks here to Mishkin, and they may be payments on that car; the payments were $90 a month; I don't know when I completed the payments; I paid $90 a month for what seemed like a thousand years. I turned in an old car as a down payment, but I don't believe I ever got anything for it at all; it just disappeared; it would have taken a little more than a year to have paid this out; it was a Hudson Speedster. I gave it to Virginia and Leslie, to buy a little car for them; it was about a year before I got rid of it, but in the meantime I got another car. One day I was down to England's, talking about cars; this car had run about 100,000 miles and was costing me a good deal of money. Mr. England took it and put it down in his basement, and showed me another car that he said he would guarantee in all its essential details; it was a Hudson coach that had been repossessed. It was a good car and I bought it on time from him at $800, approximately; I don't remember the exact date or the exact amount, but it was approximately that. That ran along until the new Hudsons came out; I kept that car until they came out. Then one day I drove this car into Mr. England's place, and he had a fellow there who [643] was going to the coast or up north somewhere who was looking for a good second-hand car. Mr. England said to him, "Look here, I will sell you this car, and sell it to you right." He got in and drove it around. The car really was a wonderful car, and they drove it

(Testimony of George W. Shute.)

around a block, and when they came back it was sold. England told me he would give me a new car, throw off the commission, and apply the purchase price of the old car on it, and I could pay the difference. That suited me, and I bought a new sedan. He applied the purchase price on it, of the old car,—and I think I paid him in cash the difference between that car and the car that had been turned in. I don't know the date of that, I think it was about a year ago now.

. . . . . .

Q. You say Mrs. Shute had this car since a year ago Christmas?

A. Not this identical *year* (car). The one I gave her a year ago last Christmas she traded in on this one, and I paid the difference. That was purchased about a year ago now, that is, the new coach was purchased about a year ago now; the one I gave her a year ago Christmas was the first one she had; I bought it in Globe, and paid for it in installments, and gave it to her on Christmas day; it may have been two years ago Christmas, but I think it was a year ago. It was an Essex, and I think the purchase price was $900; I paid Pinyan $54 a month on that; I paid it to a Finance Company, all except the last few months, I think I sent it direct to San Francisco, as Mishkin got into trouble. I had completed the payments on that car when I turned the car in, and she turned that car in to England on the car she has at the present time; she drives it and carries the license in her own name; the new one

(Testimony of George W. Shute.)

is all paid for; I think one of those $250 checks was the last payment on that car. [644] One of those checks was dated in September and one in November, yes; one of them, I think was the last payment on that car; it is my memory this is about a year ago; there are other cars I am interested in. I think I was talking about the old coach and the fellow who was going west. I then bought one of the new issue of Hudsons, a blue sedan; that was about a year ago now. That sedan I drove for two or three months, and then they came out with a new improvement on the motor of the Hudson. This was very soon after I got the car, and I raised cain with him for not selling me the new motor. After two or three weeks England told me to run the car into his place and he would give me a new one.

Q. When was this?

A. October or November of last year. I ran the car in there and he gave me the car in question.

Q. How much allowance did he make you on the other one.

A. I don't know. He just said he would give me a new car, and I think that is just what we did; exchanged the one I had for a new one,—because I had said so much about the new improved motor.

Q. Have you made any payments on the blue car?

A. Very few, if any.

Q. You had turned in another car to him, on the blue car, hadn't you?

A. Yes, I think there was $500 on that car; that should show on his books.

(Testimony of George W. Shute.)

Q. Then there should have been a $500 or $600 credit on the car you turned in?

A. I don't think so—it was just because of the difficulty we had, in exchanging these cars; I think that was the only credit allowed. [645]

Q. In the original sales contract Mr. England had here, the amount of the conditional sales contract appeared to be $1500.00; can you account for that?

A. I didn't say I paid that; I said there was a certain percentage off, but I don't know what that percentage was. In other words, the situation is such that if I said I would like to take this car out, he would say—all right. Maybe I would have a contract written for the difference, but whatever I would say would be all right with him. Then there was another car. When father died he had an old Hudson car; it wore out, so mother and May drove that car down a month ago, and I traded it in to England for a new Essex. I signed that paper for him; that is a brand new car; he allowed a credit on that of $400 and I am paying the balance.

The REFEREE.—That is an outside matter; we would not be interested in that.

A. Well, I am telling you all about it. I wouldn't want Miss Birdsall to think I am keeping anything back. I think that is the whole car transaction.

I have paid garage bills on Mrs. Shute's cars, but most of the garage bills have been my own. The bills show that since January 1, 1928, the garage bills have been $303, but I never permit a leak or rattle about my car. I use it practically every-

(Testimony of George W. Shute.)

where I go, and to save the situation as much as possible, I try to see that the car is well taken care of; I keep it down town, in the Tourist Garage on South 3d Street; the bills seem to show that the upkeep is practically $75 a month; I know it costs like the dickens. I haven't paid any garage bills on Mrs. Shute's car; the last couple of [646] weeks I haven't patronized any except the Tourist Garage and Griffiths; the checks to Paul Bennett are for gas; the ones to Griffiths are for repairs; the ones to the Tourist are for storage, and maybe for a little gas; they haven't done any work on that car for a long time, however, most of it is for storage. I pay $5.00 a month for the car as I keep the car there permanently; then I drive Mrs. Shute's down on days she isn't using it and leave it there in the day time and pay $5.00 a month for that; his usual charge is $7.50 a month.

Q. On the 9th of April you gave a chattel mortgage on this car to the First National Bank of Arizona to secure the payment of $750.00. Did you think when you gave that mortgage that you had any equity in the car?

A. I think I have an equity in it now. Under the conditional sales contracts you have no equity; you either own the contract or you don't. I hope when this matter is over that I can go back and continue to pay out this car, but I am not going to pay it out for someone else's benefit.

Q. If that is true you have some idea of what equity you have.

(Testimony of George W. Shute.)

A. I think I have reduced it to $1100 or $1200.

Q. You think there was an equity in the car of $500 or $600 at the time of bankruptcy.

A. There is no equity under the conditional sales contract.

Q. I realize that, but at the same time there are credits on it.

A. Yes, I have credits of $500 or $600.

Q. And this is what you mortgaged to the bank? [647]

A. No, I mortgaged the whole thing to the bank. They demurred about taking it; they said they didn't want a chattel mortgage, but I said that it looked like I was going to have a little difficulty and that if there was anything in it, it would go their way rather than some other way.

Q. You borrowed $750 from the bank then?

A. I have told you a dozen times that I did.

Q. How was it paid to you? A. In cash.

Q. Did you deposit it to your account?

A. I don't believe I did; I think I paid it out in cash.

Q. To whom? A. To different creditors.

Q. What creditors?

A. Well, I paid some garage bills and—

Q. They were paid by check, weren't they?

A. Just speaking from memory, I paid $200 to Mrs. Geare in Los Angeles; I had been owing it for some five or six years; I paid that to her in cash.

Q. For what did you owe that?

A. I had borrowed it from her in Globe.

(Testimony of George W. Shute.)

Q. When was that? A. In 1921.

Q. Did she have a promissory note for it?

A. No.

Q. That indebtedness was incurred subsequent to Mr. Mackay's wasn't it?

A. That was in 1919—yes, I think so.

Q. You paid her the $200?

A. In cash, yes. [648]

Q. What else did you pay with this $750?

A. I can't remember all of them, but I paid it all out. I paid the bank $100 out of that also; I had a note there, for thirty or sixty days; sometimes I borrow a hundred and give a note for it. I don't remember any other payments I made out of it; I am not sure whether I paid Mr. Lewis $100 out of that or out of a dividend; I don't believe I deposited any part of the $750; I think I used it as cash.

Q. Then if there were any deposits made in the bank immediately before you filed your petition in bankruptcy, they came from some other source, did they? I notice here that on April 9th, which was the same day you made this chattel mortgage, there was a deposit of $200; what was that?

A. On the same day?

Q. It was on April 9th.

A. Well, I may have done that.

Q. On April 11th there is a deposit of $250.

A. That came from the dividend that came in subsequent to the filing of the petition.

(Testimony of George W. Shute.)

Q. You didn't file your bankruptcy petition until the 17th, did you?

A. That must have been the dividend; it could not have been from any other source.

Q. Have you brought the statement that Mr. Nealon reruested at the last meeting, showing the statement made to you by Armstrong, Lewis & Kramer,—of the different amounts paid you?

A. I think there was one of them.

(Handing witness paper.)

Q. I will ask you to look at that. Is that a statement of [649] the income received from Armstrong, Lewis & Kramer during the period it purports to cover?

A. Mrs. Parry usually signs these, or puts a little tab on them, but I think that is her recapitulation of the amounts I have received since 1925, from the firm.

Q. You have not made up any statements of amounts received prior to that time, and submitted them to the trustee, have you?

A. No, but she asked me if she should go clear back.

Mr. LEWIS.—The request was that we should follow the checks.

Q. Do you think this is the original statement?

A. Yes, I think so.

Miss BIRDSALL.—I would like to have that marked for identification as Bankrupt's Exhibit 1.

A. That is not what that is. Mrs. Conger made that up. She totaled the amounts of checks and

(Testimony of George W. Shute.)

receipts. The amount is somewhere here, showing what I received from the firm.

The TRUSTEE.—Is this it? (Exhibiting pink slip of paper.)

A. Yes, that is it. If those two are pinned together they will make a complete statement of what I have received from the firm since November, 1925.

Q. I will ask that they be pinned together and marked for identification, as requested, as being the original book entry filed by the bankrupt.

Mr. LEWIS.—That covers a bit more than up to the date of the bankruptcy; it is to May 1st. In this typewrittten statement [650] which is marked "Bank reconcilement," the receipts marked to May 1st total $26,671.78, while the pink statement seems to indicate that there were some other payments, making a total of $30,071.78; I imagine those figures that Mrs. Parry has to May 1st mean the whole of the year 1928 up to the date she made the slip that is my conclusion,—$26,671.78; that should bring it down to—well that couldn't be, either, because that is 1928; she totaled the checks to April 21st.

Q. Did you have any receipts in addition to those from the firm?

A. They are all here. Her figures are supposed to be right up to the minute.

Q. Did you give her any other amounts besides those received from the firm?

A. No, Mrs. Parry keeps all of those accounts herself.

(Testimony of George W. Shute.)

Q. You have no amounts that you received from other sources than from the firm? A. No.

Q. You have testified to $500 as received from Goswick; might that be that?

A. That was last year, you see.

Q. Well, what does this $30,071.78 mean, then?

A. I don't know.

Q. How are we going to find out?

A. Ask Mrs. Parry; she will know; in fact, this doesn't look like her writing from here down (indicating); looks like someone else had put something on there.

Q. Well, we will leave that for the present. Can you tell of your own knowledge approximately what you have received from the firm; would that amount of $2450 be the amount you had received to the date of bankruptcy? [651]

A. I think that would be too much; I have had no dividend in May; we had one dividend the 1st of April, and I think that would be too high.

Q. Have you any idea of what these figures represent?

A. If they don't represent what you received from the firm, how are we going to find out?

Mr. LEWIS.—That statement there should show it.

Miss BIRDSALL.—This is the first time we have seen that at all. Now, in going over roughly the checks submitted from November, 1925, to the present time, I find about $3700 as drawn to cash or

(Testimony of George W. Shute.)

with no record of what they represent; can you testify as to what became of that?

A. Since 1925?

Q. Yes.

A. Yes, I have an idea of what became of it; that is the way I would draw out money; I might draw a check to cash, get the money, and then it would go in a hundred different ways.

Q. What were those ways?

A. Well, part of it might be for money I would use on trips, in part.

Q. But when you did that you would receive it back from the firm? A. Yes.

Q. That would show as being in addition to the regular dividends, then? A. Yes.

Q. Was any part of that spent for investments of any kind? [652]

A. No. Wait a minute, there was—no, none of the cash was spent that way.

Q. Have you made any investments during that time?

A. I invested $250 with Arthur La Prade in some oil land in Texas or Alabama.

Q. Have you stock for that?

A. I have nothing. Arthur La Prade came over some time ago and told me, with Mr. Moore and two or three others, that he had an old school-teacher who had some leases in Texas that promised to make a quick return and asked me if I would go in with him, and raise some money to do something with the leases. I told him I would go in for $250

(Testimony of George W. Shute.)

if he assured me that it was all right. He told me this man knew what he was about, and that by the first of the year, or within a few months, we might expect to get back three or four times what we put in. The fellow was just a fake. After a certain length of time we found out that he had no leases at all, nothing at all, in fact, except a glib line of talk, with which he had imposed on La Prade. After I filed the bankruptcy petition, and after this came on, La Prade sent me a check for $250. I asked him why he had sent it back, as it was not incumbent on him to do so, but he said I was in financial difficulties, so he sent it to me.

Q. Then that $250 really belongs to the bankruptcy estate?

A. Maybe it does; I am not sure. It depends on how you look at it. La Prade was not under obligations to return that to me; the man imposed on him.

Q. I have here a number of checks numbering about $285 to Berryhill; what are they for?

A. They represent payments on a phonograph which I bought for Mrs. Shute just before Christmas. [653]

Q. Have you any other musical instruments in the home?

A. No; that was being paid for in $50 a month payments.

Q. What was the price of it? A. $385.00.

Q. Is it all paid for?

A. There may be two months back on it.

(Testimony of George W. Shute.)

Q. On January 4, 1928, you drew a counter check for $500. Do you recall what that was used for?

A. When was that?

Q. January 4, 1928.

A. I don't recall drawing that amount of money.

Q. That was only three months ago, and that was a considerable sum of money.

A. I don't remember it, but it will probably come to me. My mind isn't working as it ought.

Q. There are some of the cash items aggregating $3700 that show as having been drawn to cash since November, 1925. On November 29, 1927, there was a counter check for $300; do you recall what that was for?

A. I imagine I drew that out and gave it to Mrs. Shute for money to use in the house.

Q. On November 17, 1927, you drew $100 and on November 17, 1927, one for $150.

A. I probably drew that out for expenses in making a trip, or for house expenses.

Q. Would you have given her $550 during a period of two weeks?

A. I might have. She would probably remember it much better than I.

Q. On October 28, 1927, there was a counter check for $100, to cash; what was that for?

A. That might have been for the same purpose; checks of that size are very usual. [654]

Q. What amount, per month, approximately, did you give her for household expenses?

(Testimony of George W. Shute.)

A. What I would receive would control that very largely.

Q. But you know approximately what the household expenses were, don't you?

A. Well, we pay $75 a month rent and—

Q. You pay that by check, don't you? I mean outside of that.

A. Well, the groceries, her clothing, etc., would amount to probably $250 a month.

Q. That is in addition to the rent, lights, water, and telephone, which you pay by check?

A. I think so. It just depends on how much you have; if you have the money, it goes. Mrs. Shute is not at all extravagant, and we often talk about it and wonder where it goes. She does not have a maid; she does all her own housework.

Q. Yes, it is because I know those things that I am asking you, and I do not understand it. You will recall in September, October and November that you were negotiating with me about the settlement of this Mackay claim.

A. Yes, I recall it.

Q. And you said you did not think you could bind yourself to pay as much as a hundred dollars a month. A. Yes.

Q. And yet you drew $300 and $500 checks with considerable liberality, it seems.

A. It was my money.

Q. It was your creditors' money.

A. No, sir, not this creditor.

Q. It is scheduled as a debt.

(Testimony of George W. Shute.)

A. Yes, I scheduled it. [655]

Q. On February 20, 1928, I notice a check to White and Wesley for $100; do you recall that?

A. That was for a setting for a ring.

Q. For whom? A. For Mrs. Shute.

Q. What property has Mrs. Shute in her own name, in addition to the property you have testified to, at Globe?

A. She has a little savings account of about $1,000.

Q. Where is that?

A. In the First National Bank. Then she owns her personal belongings, the house in Globe and a few things I have given her.

Q. Has she any other investments?

A. None at all.

Q. Do you pay the expenses on the property at Globe?

A. No, most of that comes out of the rent of the house. I don't think there was any rent to pay for putting up something for the sewer. I believe I paid that. I think I am a year behind on the taxes now. Last year's taxes are due on the property now; she was asking about it a couple of weeks ago. I pay $2.00 a month on the water; the renter pays the balance. The check in September, 1927, for $70.64 was for past due taxes; we have been trying to make up the back taxes. The place is rented for $50 a month now; it is made out in a check to me and I turn it over to her. There may have been an instance or two where I deposited it

(Testimony of George W. Shute.)

to my own account, but I have always tried to turn it in to her, as I didn't feel I had any right to it. Most of it has been applied on the place in some way; we have tried to use the rent to keep up the expense on the house. If there was an occasion where I could pay something for her, I did so, [656] and let the $50 stay in her savings account. I did not say that I would ascertain the amount still due on the mortgage to Mary E. Holmes, but I think the amount is about $700. I wrote Mrs. Holmes about it five or six weeks ago and in her answer she referred me to Mr. Foster; the amount of the mortgage was $3500, and it is all paid except about $700; the check dated September 7, 1926 for $3,000 was applied on the mortgage, and the $300 in monthly payments. I believe the mortgage was given in 1919, when I purchased the place.

Q. You said Mrs. Shute purchased the property with money she received from property she sold in Prescott. How much did she obtain for that?

A. Something like $4500.

Q. How much of that was paid on this place?

A. I will have to tell you a little about that so you will understand. Mrs. Shute owned this property in Prescott, and in about 1913 or 1914 she sold it. I think she received a little over $4500 for it. When that money came down, we used it in living expenses just such as you see in these checks. We bought a little house on Devereaux Street and part of this money was left, and the understanding was that Mrs. Shute should keep the real estate to com-

(Testimony of George W. Shute.)

pensate her for the money she had received from the Prescott property. Then later we traded that in, through the Bank, for the place on Sycamore and First. That is the house she has now; we bought it from a man named Sanders.

Q. What was the purchase price?

A. $6500. It was put in her name to protect her in the amount of $4500.00.

Q. You have testified that you have paid in $1,000 in payments on this place. [657]

A. I think it was more than that. I think when I get it all paid, with a low rate of interest, Mrs. Shute will be about paid her interest.

Q. And what you borrowed from Mary E. Holmes was on the purchase price of that property?

A. It went into the purchase price. We paid Sanders in full for it.

Q. From whom can we get the record as to the balance due on it?

A. No one, except from her. It drew 8% interest.

Q. Is the note here?

A. I imagine she has it.

Q. The payments were made direct to her?

A. Yes, she is a very dear friend of mine. I think there is approximately $750 due on it; the taxes run $85 or $90 a year. The check to Bandaur for $500, where the stub says "stock,"—Bandaur told me about an investment he and Snell had in Kingman; said he had a friend who was handling the transaction; and that if I would put in $500, he

(Testimony of George W. Shute.)

would guarantee we would not lose our money; we were to pay 25¢ and sell it for 50¢; I never got the stock, receipt, or anything else; it is gone, Bandaur is responsible if he wants to be; I have talked to him and he says the fellow just double crossed us, and I believe that is just what happened; I trust Joe implicitly. The check dated June 24, 1927 for $500 I imagine I gave to Mrs. Shute for a trip last summer; she left about that time, I cannot say definitely, but I gave her about that amount when she left. H. E. Smith is Mrs. Shute's brother's son. He graduated from a school of dentistry and she wanted me to send him $50 to buy something he wanted for his office when he started out, and that check of June 23, [658] 1927, was for that. The check of November 10, 1927, to Armstrong, Lewis & Kramer for $139.29 was for one of two items. It probably represents the 15% interest that I had in Judge Lewis' estate; the other check for $179.49 that was an accumulation of amounts that had run five or six months. Suppose I should go to Tucson, and I drew $50 for expense of that trip and I spent $25 of it. I am charged with the whole amount; they run along and then are checked up. That item is one of the two things. On June 9, 1927, there is a check made to cash, $100, endorsed on the back "Eileen Whitlow"; she was a little girl who stayed with us and taught school at the Osborn School. She was taken sick and I deposited this to her account, for a few dollars to use when she went home; I gave it to her. The check on February 23d

(Testimony of George W. Shute.)

to V. H. McAhren was for more experience. McAhren and I went on a fellow's check for $300 to make a trip to Kansas City; that is my half of that. The check dated January 21, 1927, to J. B. Armour for $200, and one April 14, 1927, for $100, represents money I let Bud have; he has returned most of it, in different amounts from time to time. I would never ask him for it; I take it out of money I received as income and loaned it to him; it was originally received from Armstrong, Lewis & Kramer; that was its source; it merely came back. If I took a list of checks in which this $300 was included and checked it against my income it would be really checking $300 more than my income, yes, but it would still be the same amount of income; it isn't income; it is a receipt; I won't argue with you as to whether it would be checking my disbursements against my receipts. [659]

Mr. LEWIS.—He could make his bank account practically double what it is by drawing a check and then redepositing the money; it is slightly deceptive in that way, where he would borrow a hundred dollars and then get it back.

Q. I don't think he understands yet what I am getting at.

Mr. LEWIS.—Well, you can't make the income from the firm any more or any less; it is what it is; but other amounts he received from any source should be added to that, of course. But whatever amounts he loaned and had returned should be deducted.

(Testimony of George W. Shute.)

Q. This amount and the others are all shown, but they do not all come, as it now appears, from money he received from the firm.

Mr. LEWIS.—You mean all the deposits that show on the bank statements; no, there is a difference of about $3,000 there.

The TRUSTEE.—In your schedules filed on the 16th or 17th, your statements show receipts from Armstrong, Lewis & Kramer of items of $2,000 and $450. I would like to have the dates you received these distributions. I am asking you now so that you can look them up; I also notice that your check stubs do not carry up to the time of filing your petition; have you the rest of those stubs?

A. They are probably in the check-book I am now using. I think the Iron Cap stock I sold brought $300 a share; it may have been $325; there were 100 shares, I didn't recollect it but Mrs. Shute told me; it was sold during 1923; that is all we ever owned of it; it was never hypothecated to the bank; the stock the Valley Bank had was in my name because I received dividends from it; I could not have received them otherwise. [660] That was 1000 shares, and it is my recollection that the only other block of stock I ever owned in the Iron Cap was this 100 shares. Then there was that Utah stock I mentioned this morning; I think that was a reorganization, and the reorganization of the concern paid off the old stockholders on the basis of 30¢ on the dollar, or something like that. They retired

(Testimony of George W. Shute.)

it completely; I can't think of the name of it, but it seems to me it was the Iron Blossom.

(Examination by TRUSTEE.)

I did not testify that in June, 1924, I paid something like $2200 to the Old Dominion Bank in Globe; it was in 1927; it was represented by notes that the bank held; the total amount of that indebtedness was right at $3,000; there was nothing owing to the Copper Cities Bank in addition to that; that was all I owed over there; it had run along for years; the beginning of it was years before that. It was for small notes, making up overdrafts, and little amounts I had borrowed from time to time. It started as early as 1911 or 1912. The notes had been renewed and the interest compounded, etc. $3,000 was the principal with accrued interest. I think that was all I owed; I didn't figure it very closely. They said they would take $2200 and I paid that. I don't recall when the payment was made to the firm of Armstrong, Lewis & Kramer in the big irrigation case; it seems to me it was close to June 1st, 1927, but my recollection is hazy.

Mr. LEWIS.—It was in that part of the summer, not later than July; I think it was the very latter part of May or the first part of June. [661]

Q. Just before lunch I asked you if you would obtain the dates of the payments made you by the firm.

(Witness thereupon handed check stubs and pink slip to the Trustee.)

Q. This statement shows a receipt by you from

(Testimony of George W. Shute.)

the firm of Armstrong, Lewis & Kramer of $750.00 on Februay 16th of this year. Is that correct?

A. Yes.

Q. You are satisfied as to its correctness?

A. Yes.

Q. On March 14th there is a payment of $625.00?

A. Yes.

Q. And on April 10th, $765. A. Yes.

Q. This is in addition to the amount on January 26th of *$3,00* and *and* on April 10th of $150, is it not?

A. Those last two might have been included in the others.

Q. One of them is the old firm and the other is the new firm, as distinguishing the two firms of attorneys? A. Yes.

Q. That shows a receipt by you in the month of April prior to the filing of your petition in bankruptcy of $875 in the two items? A. Yes.

Q. In addition to that, during that period, you received $750 from the bank, as to which you testified? A. Yes.

Q. Now have you received, subsequent to the time of filing your petition in bankruptcy, from the firm of Armstrong, Lewis & Kramer any dividends?

A. That shows them all.

Q. The last date on here is April 10th?

A. Then that is the last. [662]

Q. You have received none since then?

A. That shows all of them.

(Testimony of George W. Shute.)

Q. During this year, 1928, did you receive any income from any source other than the firm of Armstrong, Lewis & Kramer? A. No.

Q. Other than this $750.

A. Yes, I know that.

Q. Have you owned any other real estate, during the past ten years, other than that one lot listed on the schedule and whatever interest you might have in Mrs. Shute's property. A. No.

Q. Have you owned any personal property other than that shown in the schedules and that disclosed by the testimony here, during that period of time?

A. During the last ten years?

Q. Yes, during the last ten years.

A. That is rather a hard question to answer; there is nothing that stands out in my memory. I owned a few cattle and sold them to my brother in 1914 or 1915.

Q. In the last ten-year period have you ever had as much as $10,000 in personal property at any one time? A. I should say not.

Q. Did you save any money out of your salary,—as Judge, I mean? A. No.

Q. I believe you testified this morning that you had to get some funds from Mrs. Shute during that period, when you were on the bench? A. Yes.

Q. And that was used in living expenses?

A. Yes. [663]

Q. At the time of the purchase of the property in Globe now standing in Mrs. Shute's name, did she have a bank account? A. No.

(Testimony of George W. Shute.)

Q. The money that was paid in cash on that deal, where did it come from?

A. You mean on the original purchase of the house in Globe?

Q. I mean actual cash.

A. I am a little bit hazy as to where it came from. Part of the Prescott money went into the little house and the rest of it we worked out during a period of years until it was finally paid.

Q. That was the house on Devereaux Street?

A. Yes.

Q. Is that all paid for? A. Yes.

Q. Do you know how much of Mrs. Shute's money went into that house?

A. I know we intended to protect her for $4500, with the title to this property.

Q. The Devereaux Street property was $2100.

A. Yes.

Q. Was it paid all in cash? A. No.

Q. Do you recall how much of it was?

A. It must have been a small amount. It seems to me that Mrs. Shute was in Prescott when we bought it; that is why I say this money was put into it. The owner only required a small initial payment, and that probably came out of the Prescott money.

Q. About when was that transaction?

A. It was in 1911 or about that. [664]

Q. What year did you go on the bench in Globe?

A. 1912.

(Testimony of George W. Shute.)

Q. I asked you here the other day to produce your life insurance policy.

A. That is at the office; I will send for it.

Q. What methods did you use to keep your accounts, prior to the opening of the bank account?

A. I didn't keep any. I received my salary on the 15th and the 1st, and paid it out in bills, and was usually about $9.60 short.

Q. I asked you if you had any statement of balance sheets rendered you previously by Armstrong, Lewis & Kramer.

A. Mrs. Parry gets them out quarterly.

Q. Have you any of those statements?

A. I will ask Orme to get them for you.

Q. There is a reorganization of the firm in progress at the present time isn't there?

A. Yes.

Q. Has there been any inventory or appraisal or balance sheet made up for that purpose?

A. Not yet.

Q. That is contemplated?

A. That is my understanding, yes.

Q. Can you give us at this time an estimate of the value of your interest in the firm of Armstrong, Lewis & Kramer?

A. I don't know what it would be; I haven't the slightest idea.

Q. Will you furnish me with such data as you can that I may submit it to the appraisers of this estate?

(Testimony of George W. Shute.)

A. I will give you whatever assistance I can. [665]

Q. Have any steps been taken to abrogate the contract of which you gave me a copy?

A. You mean the partnership contract?

Q. Yes. A. No.

Q. I notice in some of the checks that approximately $100 income tax has been paid by Mrs. Shute, or rather you have paid amounts to that extent for her income tax; will you explain that?

A. Mrs. Parry divided that between the two of us so as to make it a little cheaper; she made it up in two separate sheets for reasons of her own.

Q. You have in your possession, I take it, copies of the income tax return? A. Yes.

Q. Will you give these to Mr. Lewis so I may examine them? A. Yes.

Q. This exhibit marked as Creditor's Exhibit No. 1, says, "Moneys received up to May 1st, 1928"; as a matter of fact, the $26,671.78 was all received prior to the time of the filing of the petition in bankruptcy was it not?

A. Yes, I imagine so.

Q. Now, there is added to the $26,671.78 other items on this pink sheet attached to and being a part of Exhibit 1, raising the amount to $30,071.78. Does that all represent money you have received from Armstrong, Lewis & Kramer?

A. The memorandum shows that.

Q. During all this period, did you receive any

(Testimony of George W. Shute.)

large sums of money from any other source, other than those you have testified to? [666]

A. I think I have testified to all of them, either at this hearing or the other one.

Q. There is a memorandum on the back of this sheet, which is a part of Exhibit No. 1; it is in pencil. Will you kindly examine it and see if it has any bearing on the matter before us?

(Witness examines paper.)

A. I have no idea what it is.

Q. Are those your figures?

A. They are not my figures.

Q. You have already made all the explanation you can about the check stubs that are missing?

A. Yes, I have tried to recall that $500 check, but I cannot remember what it was expended for.

Q. Has Mrs. Shute any independent property on which she is drawing income? A. No.

Q. Now, in regard to conducting the business of Armstrong, Lewis & Kramer. The business goes into the firm and you divide the work among yourselves, and do it as it is most convenient; is that it?

A. No, ordinarily we all have our personal clients, who come either to Mr. Armstrong, Mr. Kramer or to me. The work is not allotted around until some one of that group has a line of work he cannot take care of; then there is a discussion and it will fall to the one who has the least on hand.

Q. And your take care of it in the way that is best to suit your own convenience. A. Yes.

Q. Now, during the four months immediately

(Testimony of George W. Shute.)

preceding the bankruptcy, can you tell me what debts you have [667] paid?

A. I cannot answer that without going through those checks and stating what they were used for. There are a few items outside of those checks that I have paid for.

Q. In my report I listed all your property with the exception of your library. I did not count that in. Have you any other property that does not come within the exemption statute, piano, for instance, or musical instruments?

A. We have none of those things.

Q. The checks to the treasurer of Gila County were for taxes on the house at Globe?

A. Yes, I think we paid one or two years.

Q. They are not on any other property?

A. No.

Q. This mortgage to Mrs. Holmes; was that purchase-money mortgage? A. Yes.

(Witness produces life insurance policy and presents it to trustee.)

Q. This is the only life insurance you have?

A. Yes.

Q. Is there a loan against it? A. No.

Q. I will ask you to leave this with me, so I can ascertain the conditions of the policy. A. Yes.

The REFEREE.—Do you intend to keep this in force?

A. I think it is behind a little.

The TRUSTEE.—I would like to find out the cash loan value.

(Testimony of George W. Shute.)

A. It has no loan value; it won't lapse until the 20th of June. [668]

The REFEREE.—According to the policy there is a cash loan value of $750.60 the surrender value exceeds the loan value a little.

A. As I understood it from the agent, it has no loan value.

The TRUSTEE.—I may want to ask the Court to appoint appraisers, and I will have to give this a little further consideration.

(Examination by Miss BIRDSALL.)

Q. This statement you have submitted this afternoon shows the receipts from Armstrong, Lewis & Kramer since the first of the year? There is one February 16, $750; March 14th, $625, and one April 10, $625; then on January 26, $300 and on April 10, $150.

A. The lower figures are old accounts which we have in the Trustee account; we have two accounts, the old firm and the new firm; we have to pay the Lewis estate the amount due it. In the new account we only have the accounts in which the Judge Lewis estate has no interest.

Q. The $2450 was received by you since the first of the year? A. Yes.

Q. Was that all deposited in the bank?

A. The deposit slips are shown there.

Q. The deposits aggregate $2075; that is why I am asking; you have heretofore testified that you put it all in the bank.

(Testimony of George W. Shute.)

A. Well, that is my practice. I either take it down or send it down and deposit the original check.

Q. You can look at that statement there. The first payment, January 26th, $300; you seem to have some small amounts deposited in January, but not $300. [669]

A. January 26th shows a deposit of $150 and February 8th shows another $100.

Q. According to this statement you received $750 on February 16th; does the deposit show this?

A. The $550 item is here; I probably drew out the difference and gave it to Mrs. Shute. I do that often and the deposit slip will only show the amount actually deposited.

Q. Then if that has been done frequently, it does not reflect everything, does it?

A. It shows the amounts received. The deposits, it is true, will not show whether they are from the firm or not.

Q. But you say you did not deposit all of the amounts received from the firm?

A. No, but the amounts I received from the firm show on the statement, so you see you can check them.

Q. We could determine what you received from the firm, but you received other items that did not come from the firm, and on the other hand some of the items you received from the firm did not go into the bank, so it is not a complete statement of books of account. If we had a statement of what you received from the firm and then a statement

(Testimony of George W. Shute.)

of other amounts you put into the bank we might know what your complete receipts were, but we don't know now.

A. Well, what I have said about the checks which I received in the form of dividends is true of everything else. Take this item on February 29th, for example. The chances are I sent that down and told her to deposit it and bring me back $200. She would deposit the $550 and bring me back the $200, and there could be no check on that because it went into the housekeeping. [670] But you have a statement showing the amount was received, and with the exception of small amounts used in that way, the deposits show the amounts received from the firm.

Q. The bank deposits would indicate that even since the first of the year there was $450 received from the firm that wasn't put in the bank at all.

A. Yes, probably more than that.

Q. When was this $500 payment received from Mr. Goswick? A. In December, 1927.

Q. Have you ever received any other amounts from him?

A. Only for fees. They would go into the firm.

Q. This $500 was not fees? A. No.

Q. Have you any interest in these options of Goswick's? A. No.

Q. You do not expect to receive any other amounts from him than this $500? A. No.

Q. If he should send you any more money you would be surprised, would you?

(Testimony of George W. Shute.)

A. I most certainly would. [671]

The following is a copy of document attached to transcript of hearing of May 29, 1928, before referee in bankruptcy:

1923.	$400 per month except Dec. when	$ 600.00	$ 5,000.00
1924.	January 15	$ 450.00	
	February 1	375.00	
	March 7	437.50	
	April 2	250.00	
	April 16	375.00	
	April 23	250.00	
	May 10	375.00	
	May 21	750.00	
	June 17	225.00	
	July 9	225.00	
	July 24	150.00	
	August 18	525.00	
	September 16	300.00	
	October 3	187.50	
	October 21	300.00	
	November 5	225.00	
	November 10	150.00	
	December 12	287.50	
	December 23	150.00	
	December 31	352.45	6,339.95
1925.	January 12	450.00	
	February 2	300.00	

1925.	February 11	750.00	
	March 5	300.00	
	March 19	225.00	
	April 13	375.00	
	[672]		
	April 20	225.00	
	April 24	450.00	
	May 11	270.00	
	May 25	450.00	
	June 30	600.00	
	July 13	150.00	
	July 30	150.00	
	September 9	450.00	
	October 8	300.00	
	October 26	150.00	
	November 4	375.00	
	December 12	450.00	
	December 31	319.14	6,793.14
1926.	January 16	180.00	
	February 6	750.00	
	February 24	225.00	
	March 9	225.00	
	March 26	900.00	
	April 23	450.00	
	April 27	300.00	
	May 24	300.00	
	May 29	300.00	
	June 17	450.00	
	July 13	375.00	
	August 16	225.00	

1926.	August 27	300.00	
	September 21	675.00	
	October 11	750.00	
	November 15	300.00	
	November 22	300.00	
	December 14	225.00	
	[673]		
	December 23	375.00	
	December 31	222.45	7,827.45
1927.	January 3	825.00	
	January 21	750.00	
	February 16	450.00	
	March 8	450.00	
	April 11	675.00	
	April 27	450.00	
	June 6	6,000.00	
	June 9	300.00	
	July 6	875.00	
	July 21	675.00	
	October 3	500.00	
	October 25	500.00	
	November 8	375.00	
	November 15	400.00	
	November 25	825.00	
	December 19	750.00	
	December 31	450.20	15,250.20
1928.	January 26	300.00	
	February 16	750.00	

(Testimony of George W. Shute.)

1928.	March 14	625.00	2,667.25
	April 10	775.00	217.25
	June 2	~~217.25~~	2,450.—
			2,667.25
			$43,823.99
			217.25
			43,606.74

[674]

(Back)

Received and Admitted in Evidence upon Stipulation of the Parties on Hearing on Objections to Discharge.

Filed Jan. 4, 1929. C. R. McFall, Clerk United States District Court for the District of Arizona. By J. Lee Baker, Chief Deputy Clerk. [675]

GEORGE W. SHUTE testified as follows before referee in bankruptcy, June 15, 1928.

(Examination by the TRUSTEE.)

Q. Judge Shute, here is the insurance policy, in which I notice the right to change the beneficiary has been reserved. I wanted to examine it.

(Policy handed to Mr. Shute.)

Q. Do you want that with you?

A. Yes, I would like to have it.

Q. But you will return it for the record?

A. Yes.

(Testimony of George W. Shute.)

Q. Judge Shute, on the copy of your income tax return for 1927, I notice that you have a deduction for bad debts of $1360. Twelve hundred dollars of that was a note of Joseph E. Noble, in regard to which Mr. Ganz has testified. A. Yes.

Q. Have you that note in your possession?

A. I don't know whether I have it or Mrs. Shute has it.

Q. I will ask for an order directing that the note be given in to the court.

A. I will resist that until I can tell you about this note.

Q. You can make an explanation of it, if you wish.

A. This is the way that happened. Joe Noble went to school with Mrs. Shute. I didn't know him during his school days but she did, and she was very fond of Joe Noble. After that I got pretty well acquainted with him, and he had the run of the house. During 1917 and 1918 he was in command of a little troop of infantry stationed at Roosevelt Dam, and he used to come to our house constantly, and we both grew very fond of him. After he came down here, it continued and we both considered him a hundred per cent O. K. One morning he came into the office and [676] told me a story of some trouble he had gotten into and said he had to have a certain amount of money that day. I told him Mrs. Shute had a little savings account, and that if he would be sure to pay it back and take care of her for it, he could probably get

(Testimony of George W. Shute.)

the money from her. I went with him to one of the loan concerns for the amount of money which he wanted, but they wouldn't loan him but $300. He asked where Mrs. Shute was and I told him she was shopping somewhere; that she had come down with me that morning and he said he would go out and find her. About half an hour later he came back with her. I explained to her what the trouble was and she finally said she would let Joe have it if I thought he would pay it back. I talked to Mr. Washburn about it, as he was acquainted with him, and he thought the same as I did about it. I made the arrangement myself with the bank, it was for an even $1200. Mr. Washburn made the arrangements with Joe, in which he said he would pay the note, and I endorsed the note for him. It ran along and Joe did not meet his obligations, and finally when it fell due the Bank asked me to pay it, and I drew the amount out of her savings account and paid it. They turned the note over to me, and we have it. That has been the subject of many a bitter controversy between Mrs. Shute and myself. Joe has never paid a cent of it, and I have charged it to experience and let it go at that.

Q. I am asking for an order for the note on the theory that it is an asset of the estate, for whatever it may be worth.

A. The note belongs to Mrs. Shute. It was paid out of her savings; I never had a dollar to pay it with; that was understood by all of us. [677]

(Testimony of George W. Shute.)

Q. I must ask for an order for the note. It has been shown by the testimony of yourself and Mr. Ganz that the savings account was made up, to a large extent, of earnings of Judge Shute as a member of the firm of Armstrong, Lewis & Kramer; that it is community property, and therefore this note is an asset of the estate.

A. We will resist that.

Q. In this copy of your income tax report for the year 1927, I call your attention to the fact that this $1200 is included in your income tax return, and not in the income tax return of Mrs. Shute, being listed therein as a debt; is that correct?

A. That is correct, but that income tax return was made up by the bookkeeper by making it in two returns, and so made up as to make the cost as low as possible; naturally I did not explain these matters in detail to Mrs. Parry; she simply understood it was a debt, and that it came off.

Q. You made the usual verification to your income tax return? A. Yes, of course.

Q. And she made verification of hers?

A. I think they are fairly within the terms of the requirements.

Q. If this was a separate loss of Mrs. Shute, it was properly deductible from her separate property tax, if any.

A. The result to us was exactly the same; that is the reason it was done that way. I didn't go into details with the bookkeeper. It was a matter I was

(Testimony of George W. Shute.)

somewhat ashamed of because it had cost her that amount.

Q. I think the note should be produced as an asset of the estate.

(Arguments by counsel and referee.) [678]

A. I will produce the note.

Q. There is a note of Charles Pinyan which is deducted as a bad debt in your income tax return for 1927,—$75. A. Yes.

Q. Have you that note? A. No.

Q. The note has been destroyed?

A. Yes. He was the son of the man who used to be City Treasurer. He went to a loan concern and borrowed the money on my endorsement; I paid it. I don't know where he is or anything about it, and I threw away the note.

Q. That was about when?

A. It seemed to me the money was borrowed about a year ago; I don't remember the date I paid it. It was due a long time before I paid it.

Q. I don't find anything in your checks paying this note, or at least that I can identify; can you place the date?

A. I might be able to locate the date; I don't remember whether I paid it by check or not.

Q. Was it in 1927 or 1928?

A. I think it was in 1927; I am sure it is a year ago at least.

Q. There is something here to Clayton Bennett.

A. I advanced a little money to him; he was sick.

(Testimony of George W. Shute.)

I just gave it to him; I knew I would never get it back.

Q. In your schedule here you report a commission on sales, $1,000 to Wesley Goswick.

A. I think that is wrong. I was under the impression that all I ever got from Goswick was this $500, but in thinking it over he paid me $500 more; he owed me for material and stuff which I had furnished for some claims we owned out south of Globe; we did a lot of work and I [679] put up the money. Then he finally sold the claims, he gave me back the $500; that other $500 should not be in the income tax return.

Q. I am going by the return.

A. I didn't have any commission at all.

Q. There was a sale made by Goswick?

A. A conditional sales—

Q. And you were instrumental in some way in making that sale?

A. No, the sale was made through a man named Henderson, of Miami.

Q. What was the amount?

A. $200,000. I handled the papers so I know about it.

Q. Do you know the name of the purchaser?

A. I think it was the Tonto Mining Company,—New York people.

Q. Was it an Arizona corporation?

A. No, I think it was a Maryland corporation.

Q. About what was the date of that sale?

(Testimony of George W. Shute.)

A. It was about December, 1927; I think the first payment was due in June, 1928.

Q. Your best recollection is that in December, 1927, you received $1,000 from Goswick?

A. It was along there close. In order to understand that you will have to understand the transactions. The first transaction I had a lot to do with. That was an option made to a fellow,—I can't think of his name, but the man I had most to do with was an engineer named Bedford. I took care of the preliminaries of that sale through Bedford, some time in the latter part of 1925 or 1926; I don't remember; that was the first deal. Under the contract drawn by me the company Bedford represented was to go on [680] these claims and put on certain improvements and machinery and was to make certain payments. I think the first of these payments fell due in September or October of that year, whatever that year was. They paid a certain amount down—I think $5,000 or $6,000. They went into possession and built a lot of houses and put on machinery and had made a first payment on the option.

Q. That was the first option?

A. Yes. They threw the option up in October. That was the one where I stopped them from moving off the stuff. Thereafter it was sold to the Tonto people.

Q. So that sale was made subsequent to October, 1926?

A. The sale that now exists, yes.

(Testimony of George W. Shute.)

Q. What payments have been made on the sale to the Tonto Mining Company?

A. They paid $5,000 down. I think that payment was in December, but I do know that the payment made in June was $82,500, because that was paid just a short time ago.

Q. The $5000 was paid in October, on the execution of the option?

A. I think I am a little off on my dates. I believe that was made before June, 1927.

Q. Anyway, there have been three payments made, the last made in June, of $72,500? A. Yes.

Q. The first was $5,000? A. Yes.

Q. The second you don't know? A. No.

Q. Was it a large sum?

A. It was a very substantial amount. [681]

Q. If it should become necessary to ascertain that amount, who could testify to it?

A. Mr. Foster, who represented the Tonto Mining Company, or the Old Dominion Bank.

Q. Was it handled as an escrow? A. Yes.

Q. Through the Old Dominion Bank? A. Yes.

Q. Referring again to the income tax return of 1927, I notice among your deductions, taxes paid of $104.10, and in the explanation thereof you have, Globe, $152.60, taxes one-half of community, and you deduct one-half of $104.10 from your taxes; is that correct?

A. If you mean by that the property the tax was paid on was community property, it is not correct; that is simply the way Mrs. Parry made it up.

(Testimony of George W. Shute.)

Q. But it is reported on this income tax return sheet as taxes paid on community property at Globe? A. That is what it says, isn't it?

Q. I want it for the record; you can look at it.

(Witness examines income tax return sheet.)

Q. It says one-half community is $104.10, and refers to the dwelling-house in Globe about which you have testified in previous hearings; isn't that it?

A. I don't believe I paid any taxes on the other lot at that time.

Q. Again referring to your deductions, I will call your attention to the explanation of the deductions for depreciation of the dwelling-house in Globe, cost given as $6,500; previous year's deduction of $650, and this year $325; and will ask you if that was not deducted from your income tax return? A. Yes.

Q. The other half, being $325, was deducted from the [682] income tax return of Mrs. Shute, was it not? A. It was.

Q. I will ask you if it was not a fact that the deed of record in Gila County for this house stands in the name of Jessie M. Shute without any recitation of its being separate property.

A. I haven't examined the title. I know it was deeded to her originally.

Q. I will ask you if, when the note and mortgage were signed, payable to Mary E. Holmes, did you not sign that note and mortgage as principal, as well as the signature of your wife being thereon?

A. What do you mean by the word "principal"?

(Testimony of George W. Shute.)

Q. Well, never mind that word; did you sign the note and mortgage? A. Yes.

Q. Each of them were signed by yourself and Mrs. Shute?

A. Yes, we would have had to do that to get the money; that was part of the purchase price.

Q. And since that time you have made one payment to Mary E. Holmes from your bank account of $3,000 on that mortgage?

A. If that is the amount shown by the check it is true.

Q. You have made several other similar payments? A. Yes.

Q. I will ask you if, from the time of your adjudication in bankruptcy you have collected from the firm of Armstrong, Lewis & Kramer any sums on fees which were pending business at the time of the final adjudication.

A. I think there is one small check—$200 or something like that. [683]

Q. That is all? A. I believe that is all.

Q. I will ask for an order directing that that be paid into court.

A. There is no question about that. I will waive the order as to that. Wait a minute—maybe I am going a little fast,—no, that is all right.

Q. According to the statement furnished me, you received during the year 1927 from Armstrong, Lewis & Kramer $15,250.20. I will not ask you to accept this figure as correct; you can verify it.

A. Yes.

(Testimony of George W. Shute.)

Q. According to the statements furnished me for the same period of bank deposits, you deposited only the sum of $11,028.43. In addition thereto you have testified to receipts from Goswick of $1,000 and from Mr. Wentworth of $995.

A. $1395, that was.

Q. $995 on this particular check. We have here checks to cash during the same period of $1700; a check was testified to by Mr. England as having been delivered to you of $760, making a total of $8,682.73, of which we have no explanation from the record furnished us as to the disposition thereof. Can you account for that? That is for the one year, you understand,—1927.

A. Well, $1400 of that, of course, has no place there at all. It would probably take some search and some thought to account for the rest, but the checks I turned in and the bank balances turned in ought to balance fairly closely. I did all my business in the manner I have indicated here, and while there might be some slight confusion, on the whole it ought to be very close to the actual sums. [684]

Q. I want to call your attention to the fact that the Wentworth check of $995 was deposited in the bank, as also the sum from Goswick; we have accounted for the check of $995 which was given to Mr. England on the Wentworth car, and it still leaves that amount unaccounted for.

A. Well, I can't give you the amounts now; I don't know that I ever could. The money came in and it went out, and that is all I can say about it.

(Testimony of George W. Shute.)

Q. Now, you heard Mr. England's testimony about $1195 being received for the sale of the Hudson car owned by you together with a cash payment of $100 and a note for $100—this transaction being in October of last year.

A. I tried to follow his statement as closely as I could. I don't remember about any note.

Q. Then you paid $250 immediately following that on the new car.

A. I think I stated that that was paid on the Essex.

Q. To refresh your memory, I will call your attention to the fact that you testified that you paid out the Essex in September by check of $250.

A. If I did, that is probably right; but I don't think I paid any $250 on the Hudson; I think those payments were on the Essex.

Q. The Essex car is entirely paid for? A. Yes.

Q. What was the price of the new Hudson car? Wasn't that $1535? A. The price was $1765.

Q. I mean the price to you?

A. That isn't my understanding of it. [685]

Q. The books will explain that, his books, I mean.

A. The understanding was when I bought this car that the amount of the throw-off was unascertained and unknown. I expected to get about 60% on the dealer's purchase price thrown off, but have never had any understanding with him except in the most general way.

Q. Anyway, the price was not in excess of $1535?

(Testimony of George W. Shute.)

A. It ought to be pretty close to that.

(Examination by Miss BIRDSALL.)

Q. Referring to the check for $250 made payable to Mr. England dated November 26, 1927, about which I questioned you at the last yearing, and to Mr. England's testimony at the last hearing. I had been questioning him regarding Mrs. Shute's Essex, and he said, "When we would get all the money, we would get $775." Then I asked him when this $250 was paid, and he said September 6th; that the bill was August 31st. Then I asked him if Judge Shute had made a subsequent payment of $250, and he said yes, on November 26th, 1927, but that was credited on the Hudson car.

A. I don't think I ever paid $250 on the Hudson car; I think that finished the payment on the Essex.

Q. You think that regardless of what he testified?

A. Yes.

Q. You testified then, after I had called your attention to the fact that there were two $250 checks, that the first one completed the payment on the Essex.

A. We would be able to figure it out from Mr. England's sheet here.

(Witness examines paper.) [686]

On August 31st the coach was purchased. The first payment was $250 on September 6th. I think the price of the coach was around $900, and I think we got a trade-in on her other little car of something like $400, so you can see that the $250 in No-

(Testimony of George W. Shute.)

vember was on the Essex, or else the Essex is not paid for, and I know it *is* paid for.

Q. As to this car which you gave your mother—

A. I say I gave it to her—it was like this: Mother had the old Hudson which she traded in for $400, and I gave a note for $660 and am making the payments for her.

Q. That is not material here. We can eliminate the last two items of $1060 on the credit side and the last item of $1060 on the debit side, as being the record up to the time of bankruptcy.

A. I think so.

Q. How do you account for the fact that this account of Mr. England's is balanced except for the sum of $14.50 still due?

A. This is what they did. When he sold me these cars, we had an understanding about this throw-off; I think he would throw off about twenty per cent, or about what his commission would be on the Hudson. This isn't true of the Essex, on which we split the difference. When the bookkeeper entered it up, he entered it as a cash item instead of commission.

Q. He makes a charge to you of $1535 for that car. A. Yes.

Q. There is a credit over here (indicating on sheet) concerning which he testified on the car he sold you previously—$100 is the first one; then $1185, which was a credit, then $100, and then this $250, which balances the charge of $1535; he has no charge against you at all except $14.50. [687]

(Testimony of George W. Shute.)

A. It looks that way from that, but I don't understand it.

Q. You will recall you testified that you didn't know what was still due on the car.

A. I don't recall; I don't know myself what is due.

Q. It looks as though you don't owe him anything.

A. I have never had an understanding with him as to what his discount was. I gave him this conditional sales contract to protect him.

Q. According to his own books, the car is paid for.

A. Except you can see there is no account taken of this throw-off, but I know it is there.

Q. Well, we will get further explanation from Mr. England. He testified regarding this, and it seems to me the books confirm it.

A. It doesn't make any difference whether the $250 went on the Hudson or the Essex; I know the Essex is all paid for.

Q. He testified that the $250 payment in November was credited on the Hudson car. We will let that go for the present.

Now, at the first hearing when I questioned you regarding the notes of Mr. Mackay, you were dubious about the original amount being $20,000; you said it was $17,000; I have the original note here and will ask you to look at it.

(Witness examines note.)

A. My understanding was that the purchase price of that block of stock was $17 a share; that would have made the amount of the purchase price $17,-

(Testimony of George W. Shute.)

000; I don't know how it happened that the note was for $20,000. [688]

Q. But that is the original note signed by you and Mr. Mackay, is it not? A. Yes.

Q. I will ask that this note be put into the record here and attached to the original claim; there is a second note dated December 30th, 1920, for $19,-650.95; there is another note signed July 2, 1921, for $19,978.70, signed by you and with a waiver of the statute of limitations on the back; this is your signature, is it not?

(Witness examines note.)

A. Yes.

Q. And on the back? A. Yes.

Q. I will ask that these notes be attached to the original claim.

(Notes handed to referee.)

Q. Now, as to these bank statements, June 28, 1927, showing bank deposits for that time. Referring to the statement from Armstrong, Lewis & Kramer to you, I refer to payment of June 6th, 1927, $6,000; this doesn't appear in the bank deposits; can you account for this $6,000?

A. As I remember I had drawn on that payment for some little sums of money.

Q. What I want to know is where it went?

A. On June 6th was evidently a deposit for $500.

Q. But how would you handle it, if you received such an amount?

A. I would take it down, or send it down, and deposit it, less certain amounts I would keep out in

(Testimony of George W. Shute.)

cash; there should be some sort of a record of that on that date. [689]

Q. That is exactly what I want to get at. There are many smaller discrepancies, but this is several thousand dollars, and you could not have carried that amount around in your pocket.

A. No, I should say not. On June 8th I deposited $465.00.

Q. Where was this money in the interim; I cannot trace it in your accounts.

A. You can trace a large part of it.

Q. There is a deficiency of several thousand dollars.

A. Between June 6th and June 11th there is $1165.90 deposited.

Q. There seems to be quite a large deposit the latter part of June.

A. Well, why I would be carrying that around I don't know.

Q. Well, you are the only person who can explain it.

A. I cannot explain it. Ordinarily, as I have told you, I would take out a certain amount for the house, and a certain amount for myself, and deposit the rest, and check on it for the payment of bills that were not paid at the house. That is the way I have always done, and why I should be carrying that amount until June 24th I don't know.

Q. A large part of it wasn't deposited then.

A. About $4,000 was deposited.

(Testimony of George W. Shute.)

Q. Then you received $300, and on July 6th you received $875.00; was that $875 deposited on July 6th?

A. There is no deposit on July 6th; on July 22d there is a deposit of $500.

Q. You had no other place where you deposited money? A. No.

Q. Did you make any of these deposits in the savings account? [690]

Q. Yes, I did that frequently. For instance, I would get a check of $50 from this house in Globe; I would try to add a like amount to it, and sometimes I would do that; and then again sometimes I would have to take the $50 check and use it; then I would make a larger deposit to even it up.

Q. Taking this statement on along here, there was a payment on October 3d, 1927, of $500; was that deposited? A. I don't see it here.

Q. You have no way of determining, Judge Shute, what became of the difference between these checks and the deposits, other than as you have testified?

A. No, if you go through these carefully, however, you will find that they balance fairly well. One year they might be long one way, and one year long another, but if you take the whole account you will find that it balances up fairly accurately.

Q. I have been taking it for one year. It would not be fair to go back into the 1926 deposits for sums you got in 1927. You couldn't deposit them before you got them.

(Testimony of George W. Shute.)

A. If you add up the amounts of my deposits and balance them against the checks that you have drawn, they must be pretty close together, as I have no other deposits.

Q. You could not have checked out anything that wasn't in the account of the amounts received in 1927 and the amounts checked out there is a discrepancy of close to $8,000.

A. Well, go down into 1928, and see what that shows.

Q. That wouldn't affect this.

A. If the amount in 1928 were short, it would be taken out.

Q. In 1928 there is also a less amount in the bank than what you received from Armstrong, Lewis & Kramer; it shows [691] something like $400 more received than was deposited, so there could not have been anything deposited that would make up for that amount missing in 1927.

A. I cannot remember a single cash transaction that involved a very large sum of money.

Q. And you had no other place where you deposited money?

A. No other place; I have no other bank account, no other checking account.

Q. Well, you are the only one who can explain the mystery.

A. I may be able to think of it, but I can't now. I don't know a single cash transaction.

Q. You would be taking quite a chance running

(Testimony of George W. Shute.)

around with several thousand dollars in cash in your pocket.

A. Yes, especially the way I run around.

Q. I don't know of anything else I want to ask.

A. Let me tell you about that Creed stuff; I know you will want to ask about that.

Q. Well, tell us about it.

A. Creed is my son-in-law, and he took a notion that he wanted to run a little grocery store—wanted to buy it from a fellow who was selling out; he had an opportunity of taking up a mortgage on a piece of land and paying $1500. Virginia came over and talked Mrs. Shute out of that amount of money.

Q. That was only three days before you filed your petition?

A. I don't remember the date. She asked me what I thought about it, and I told her that was quite a considerable amount of money, but she went ahead with it and took a note back.

Q. Where did that money come from?

A. Out of her savings account; it was all in one sum. [692]

Q. I want to ask you about this Geare matter. You said that out of this money you borrowed from the bank in April you paid $200 to Miss Geare in cash. How did you send that to her?

A. She was here. She had stopped off here, and that was one of the things that made me get the money from the bank?

Q. How much did you owe her? A. $200.

(Testimony of George W. Shute.)

Q. In the checks shown here, there is one in February and one in March of this year, each for $50, and then there are other smaller payments to her.

A. There should not be. Those two are amounts I sent her to pay for some sort of a machine that she wanted to get in Los Angeles.

Q. I saw some $20 checks, but I noticed two $50 payments, one in February and one in March; the latter one was just a short time before you testified that you paid her this $200? A. Yes.

Q. Then you overpaid her?

A. Well, I had never paid her a cent of interest, and I had used it since 1921. She wrote and asked me for it at the time of the loan; and then she asked me if I could not get the loan if she sent me the Old Dominion stock. So I went to see Sylvan Ganz and it went along and the note fell due and the stock was sold for it.

Q. Is that shown on the discount sheet?

A. I think so.

Q. Did you pay any of the amounts on which you signed as co-maker? A. No, she paid all of it. [693]

Q. Was that secured by Iron Cap stock you had?

A. No, that was hers.

Q. That wasn't the Iron Cap stock you had?

A. No, that had nothing whatever to do with that; it was independent of that altogether.

Q. Do you owe her any money at the present time? A. No.

Q. Is she here now? A. No.

(Testimony of George W. Shute.)

when payments came in from this house, sometimes I would use them and sometimes I would deposit them in her savings account. Sometimes I would have to use some of it, but I would try to make deposits to keep her even; but that represents money she has saved by her own work and from proceeds of this house at Globe, and if that isn't her separate estate, then I don't know what constitutes a separate estate.

Q. We will make an issue of that. Then I think this Essex car is community property.

A. If you are to make an issue of that, you don't want to overlook the fact that the original Essex was about two years old,—the one I gave her at Christmas-time.

Q. Now, as to the Hudson, I think that is also an asset of the estate.

A. There is no question about. Whatever there is in it, you can appraise it and sell it.

Q. I think we should have an order from you on Mr. England to deliver that car to the trustee.

A. I am not going to give any such an order as that, but here is what I will do; you get hold of him and see what is due on the car; we will appraise the car for whatever it is worth, and whatever the difference is I will pay that, and—

Q. I think so far as the testimony and the records show, every dollar on that car has been paid. [696]

A. Well, if I owe him nothing on the car, there is no reason why it should not be appraised.

(Testimony of George W. Shute.)

Q. Of course we have the question of the bank's right to the car.

A. I had to urge Sylvan Ganz to take the mortgage on the car; he really didn't want to take it; said it wasn't good policy for the bank to do so. (Examination by Miss BIRDSALL.)

Q. Why did you want to give it to him then?

A. At that time I had in mind that I was going to fight this thing out. I wanted this money to clear up my debts as well as I could and I wanted to protect the car so people wouldn't be coming back on it. Later, and after talking it over with older and wiser heads, they advised me not to fight it, and I have followed their guidance.

Q. You intended to put the car away so Mr. Mackay couldn't realize anything out of it?

A. I never thought of that at all; I knew he couldn't possibly touch it. That was furtherest from my mind; I made up my mind that he would never get a look in. But I talked it over with my attorneys, and they said I had better get out of it the easiest way I could, and this seemed the easiest way.

Q. You had not decided on bankruptcy then, when you borrowed this money?

A. No, I did not decide on that until I had talked it over with members of the firm.

Q. Do you recall that at the time you were negotiating regarding the possible settlement of this claim that you told me, as a reason for wanting the matter to go over until October, that the firm was

(Testimony of George W. Shute.)

in a state of [697] disruption and that you would not know about a continuation of the partnership, and that was the reason we postponed all action until October? A. I may have told you that.

Q. It was the latter part of June or July.

A. If that was true, then it was due to the fact that Mr. Moore was then threatening to go out. I know there was a blow-up and there was some talk of his going out; he had announced his intention of doing so. I was probably more responsible for talking him out of that than any other member of the firm.

Q. You will recall that I wrote you in November, stating that unless you accepted the offer of settlement of $6,000 to take up this indebtedness that litigation would undoubtedly ensue; you received that letter about that time? A. I think so.

Q. On the 25th of November this conditional sales contract seems to have been put of record.

A. That had nothing to do with that. Those were transactions that had run along with England all the time, and had no connection with this matter whatever.

Q. And that time last summer, when you said that if I brought suit on this I would never realize a cent, you did not contemplate bankruptcy then?

A. I did not.

(Examination by Mr. NEALON.)

Q. According to my construction of the law, any gifts made during insolvency are void, and I would like to have a statement of all gifts made by you

(Testimony of George W. Shute.)

during the [698] period of insolvency, in order that the property may be located. My construction of the law is that anyone who is insolvent has no right to make a gift, and it can be objected to by any creditor before bankruptcy proceedings, and by the trustee, who succeeds to the rights of the creditors.

A. And you say that any gifts made by me after the falling due of this note in 1919 is void?

Q. That is my construction.

A. I don't think that could possibly be true.

Q. You are probably as familiar with the law in that regard as I am. A. No, I am not.

Q. I think we are entitled to that statement.

The REFEREE.—As a general matter of law, that is true. If a condition of insolvency exists, any gift or sale would not affect the creditors.

A. It could not exist here as to any claim because no claim existed until this note was paid. There would be no way of determining whether I was insolvent or not until that situation came up. If we should follow that down, then I would always have been insolvent, because I have always owed money I could not pay. In other words, if I make a present to anyone during my life it would be seized in satisfaction of this debt, which did not occur until 1925 or 1926; is that what you hold?

Q. The trustee is liable on his bond if he does not use due diligence in uncovering assets. I think

(Testimony of George W. Shute.)

I am entitled to the statement I have asked for. [699]

A. Well, there is the little car I gave Mrs. Shute two years ago Christmas-time; and the phonograph.

Q. I did not mean to exact an answer from you at this time on this subject.

A. I will answer it anyway. I can't think of anything else. The amount of money I have given away is legion, $2, $3, $5, at a time, here and there.

(Examination by Miss BIRDSALL.)

Q. You testified to $100 you gave Eileen Whitlow? A. That is one of those items.

Q. You testified that was a gift.

A. Yes, but it would be impossible to follow that up; there is no way of determining where that is.

Q. She is a teacher in the schools here now, isn't she?

A. She teaches at Osborn. Then there was the setting for Mrs. Shute's ring.

Q. Articles for ordinary *person* use are excepted, I believe, such as clothing.

A. Then at Christmas-time, of course, we always gave a lot of stuff.

(Examination by Mr. NEALON.)

Q. I had not intended to inquire about anything personal or private; I am merely trying to clear my own skirts as trustee.

A. Well, I cannot think of anything else.

The REFEREE.—Have you enumerated all of the things that you think belong to the estate now, Mr. Nealon?

(Testimony of George W. Shute.)

Mr. NEALON.—So far as my personal knowledge goes. These things, so far as have been disclosed by the examination and by the records. The record discloses that the title to the [700] house in Globe is in Jessie M. Shute, but no recitation is made that it is separate property; the larger part of the consideration is also shown by the record as being a purchase-money mortgage which was and still is an obligation of the bankrupt, and that this house is community property, at least it is so far as appears from the record.

A. Evidently what I had to say about it doesn't bear very much weight.

Q. I think I could take your own statements, and get a judgment on that question.

A. My interpretation of the law would be as to what the understanding was. If there is an agreement between two people as to what is and what is not separate property, that controls.

Q. That would depend on what interest the creditors have. A. They have no concern in it.

The REFEREE.—The facts control, as to community property, and that is all there is to it. An agreement could not affect existing facts.

Q. There is no question now, as to the phonograph? A. No.

Q. And the Hudson car?

A. Except as to the conditional sales contract.

The REFEREE.—We handle those conditional sales contracts constantly.

(Testimony of George W. Shute.)

Q. So far as you are concerned, then, the trustee can have possession of that car?

A. No, sir. I have turned it back to England, but I do expect to pay the car out and to own it, and I wish to arrive at an understanding about it. I want the car. [701] I want to use it, as I need it badly. I am telling now what I would rather have done; I naturally want to save all I can.

Mr. NEALON.—For the present I will submit it as an issue; we may be able to make an adjustment of it, but the car must come in as an asset of the estate; it must be appraised by the appraisers, but if you want the car we may be able to come to some agreement in regard to it. I simply want to get in the assets of the estate, that is all.

A. You send the appraisers down to appraise it, and I will find out what is owing on it, and there won't be any trouble at all.

Q. The Essex car is an issue, the savings account is an issue, the $250 payment from La Prade.

A. Well, I will think that payment over; I feel that that is money that was prior to this litigation; legally I don't know what the situation is.

Q. The Globe property is an issue.

A. I don't know about that, except in the most general way.

Q. There will be plenty of time on that. The rents on the property at Globe would have the same status as the property itself—I mean the rents since the adjudication and they will follow the decision in this matter. On the say prior to bank-

(Testimony of George W. Shute.)

ruptcy you paid your rent on your residence here in Phoenix. Payments on leases are part of the assets of the estate.

A. I have a yearly lease. I pay the rent monthly.

Q. Are the first and last months rent paid?

A. Yes.

Q. Then I think there is some asset in the estate as to that. A. What could it be? [702]

Q. The value of that would have to be determined. As to those payments made in advance on the premises, I don't know; on the 15th you paid up to May 15th, and in addition to that there is also a month already paid at the close of the lease.

A. They would own that.

Q. But you would be entitled to possession of the premises.

A. I wouldn't be if I didn't pay my rent.

Q. On the date of the adjudication, the lease and all of the rights under it passed to the trustee.

A. That is right as a legal proposition. Of course the money I have paid in increases the value of the lease, so it wouldn't make any difference. I imagine the value would be what I pay in.

Q. We could rent the place.

A. Not for more than I pay.

Q. We would get the extra month.

A. I don't know about that.

(Examination by Miss BIRDSALL.)

Q. It appears that it is going to be necessary to take the deposition of Mary E. Holmes to deter-

(Testimony of George W. Shute.)

mine the amount due on the mortgage; she lives in Massachusetts, I believe.

A. I do not want her to be bothered in this. I can get the amount for you. She is a very old lady and I don't want her troubled.

Q. Well, I have tried twice to get the amount from you; we must have the amount that is due on it. I would like to ask for a continuance until October; there may be some other matters to go into.

The REFEREE.—The meeting should be kept open until all the examinations are closed.

Hearing continued until September 26th, 1928. [703]

The following are copies of exhibits attached to hearing before referee in bankruptcy on June 15, 1928: [704]

Form 1040.

INDIVIDUAL INCOME TAX RETURN.

for Calendar Year 1927.

G. W. Shute.
309 N. B. A. Bldg.
Phoenix, Maricopa (County), Arizona.
Occupation, Profession, or Business—Lawyer.

1. Are you a citizen or resident of the United States? Yes.
2. If you filed a return for 1926, to what Collector's office was it sent? Phoenix, Arizona.
3. Is this a joint return of husband and wife? No.

4. State name of husband or wife if a separate return was made and the Collector's office where it was sent. Mrs. G. W. Shute.
5. Were you married and living with husband or wife on the last day of your taxable year? Yes.

* * * * * * * * * * *

7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change—No change.
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? None.

INCOME.

* * * * * * * * * * * * *

4.	Income from Partnerships:		
	Armstrong, Lewis & Kramer, Trustee	11,926.10	5,963.0
	Armstrong, Lewis & Kramer ...	3,257.46	1,628.7
	Above two items being community —½ is returned here and ½ on return of Mrs. G. W. Shute.		

* * * * * * * * * * * * *

5.	Rents and Royalties (From Schedule B):		
	½ returned here and ½ on return of Mrs. G. W. Shute.....		137.5
	[705]		

* * * * * * * * * * * * * *

9.	Other Income (including dividends received on stock of foreign corporations): (State nature of income.)		
	(a) Wesley Goswick—Commission on sale	1,000.00	
10.	Total Income in Items 1 to 9.....		$8,729.2

DEDUCTIONS.

Interest Paid	529.00	
Taxes Paid. (Explain in Schedule F.)	104.10	
* * * * * * * * * * * * *		
Bad Debts. (Explain in Schedule F.)	1,360.00	
Contributions. (Explain in Schedule F.)	25.00	
Other Deductions Authorized by Law. (Explain in Schedule F.)	70.00	
Total Deductions in Items 11 to 16.		2,088.10
Net Income (Item 10 minus Item 17)		6,641.18

COMPUTATION OF TAX.

19.	Earned Net Income (not over $20.000)	$7591.78
20.	Less Personal Exemption and Credit for Dependents	3500.00
21.	Balance (Item 19 minus 20)	4091.78
22.	Amount taxable at 1½% (not over the first $4,000 of Item 21)	4000.00
23.	Amount taxable at 3% (not over the second $4,000 of Item 21)	91.78
*	* * * * * * * * * *	
25.	Normal Tax (1½% of Item 22)	60.00
26.	Normal Tax (3% of Item 23)	2.75
*	* * * * * * * * * *	
29.	Tax on Earned Net Income (total of Items 25, 26, 27 and 28)	62.75
30.	Credit of 25% of Item 29 (not over 25% of Items 28, 42, 43, and 44)	15.69
31.	Net Income (Item 18 above)	6,641.18
*	* * * * * * * * * *	
34.	Personal Exemption	3500.00
*	* * * * * * * * * *	

[706]

36.	Total of Items 32, 33, 34, and 35.....	3,500.00
37.	Balance (Item 31 minus 36)	3,141.18
38.	Amount taxable at 1½% (not over the first $4,000 of Item 37).....	3,141.18
* * * * * * * * * * *		
42.	Normal Tax (1½% of Item 38).....	47.11
* * * * * * * * * * *		
46.	Tax on Net Income (total of Items 42, 43, 44, and 45).....	47.11
47.	Less Credit of 25% of Tax on Earned Net Income (Item 30)	15.69
48.	Balance (Item 46 minus 47).....	31.42
* * * * * * * * * * *		
50.	Total Tax (total of or difference between Items 48 and 49).....	31.42
* * * * * * * * * * *		
53.	Balance of Tax (Item 50 minus Items 51 and 52)	31.42
* * * * * * * * * * *		

SCHEDULE B.—INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property.	2. Amount Received.	***5. Depreciation.	***8. Net Profit.
Dwelling House at Globe	600.00	325.00	275.00
* * * * * * * * * * *			

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15 AND 16.

TAXES—½ Community.

City of Phx.	15.60
Globe	152.60
Automobile	40.00
	208.20

½ Community is $104.10.

CONTRIBUTIONS.

Community Chest	$25.00

[707]

BAD DEBTS.

Chas. Pinyan—Endorser on Note—	$ 75.00	—Pinyan insolvent
Joseph Noble— " " "	1200.00	—Noble insolvent and executed proof
Clayton Bennett—	85.00	—Bennett died insolvent
	1360.00	

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B.

1. Kind of Property***	5. Cost (exclusive of land)	6. Value as of*** March 1, 1913 (Exclusive of land)	8. Amt. of Depreciation Charged off This Year
Dwelling House at Globe, Arizona	$6500.00	$650.00	$325.00
Professional Library	1400.00	280.00	70.00

Form 1040.

INDIVIDUAL INCOME TAX RETURN

for Calendar Year 1927.

Mrs. G. W. Shute.

309 N. B. A. Bldg.

Phoenix, Maricopa (County), Arizona.

1. Are you a citizen or resident of the United States? Yes.
2. If you filed a return for 1926, to what Collector's office was it sent? Phoenix, Arizona.
3. Is this a joint return of husband and wife? No.
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent. G. W. Shute.
5. Were you married and living with husband or wife on the last day of your taxable year? Yes.

* * * * * * * * *

7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change. No change.
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? None.

INCOME. [708]

* * * * * * * * * * * *

4.	Income from Partnerships: Armstrong, Lewis & Kramer, Trustee.....	11,926.10	5,963.05	
	Armstrong, Lewis & Kramer.....	3,257.46	1,628.73	
	The above two items being community—½ is returned here and ½ in return of G. W. Shute.....			
5.	Rents and Royalties (From Schedule B): ½ returned here and ½ on return of G. W. Shute.....		137.50	

* * * * * * * * * * *

10.	Total Income in Items 1 to 9	7,729.28

DEDUCTIONS.

* * * * * * * * * *

12.	Taxes Paid (Explain in Schedule F).....	104.10	

* * * * * * * * * * *

17.	Total Deductions in Items 11 to 16	104.10
18.	Net Income (Item 10 minus Item 17)	7,625.18

COMPUTATION OF TAX.

19.	Earned Net Income (not over $20,000.)	$5000.00
*	* * * * * * * * *	
21.	Balance (Item 19 minus 20).....	5000.00
22.	Amount taxable at 1½% (not over the first $4,000 of Item 21).....	4000.00
23.	Amount taxable at 3% (not over the second $4000 of Item 21)	1000.00
*	* * * * * * * * *	
25.	Normal Tax (1½% of Item 22)	60.00
26.	Normal Tax (3% of Item 23)	30.00
*	* * * * * * * * *	
29.	Tax on Earned Net Income (total of Items 25, 26, 27, and 28).....	90.00
30.	Credit of 25% of Item 29 (not over 25% of Items 28, 42, 43 and 44)....	22.50
31.	Net Income (Item 18 above).....	7625.18
*	* * * * * * * * *	
37.	Balance (Item 31 minus 36)	7625.18

[709]

38.	Amount taxable at 1½% (not over the first $4000 of Item 37)	4000.00
39.	Balance (Item 37 minus 38)	3625.18
40.	Amount taxable at 3% (not over the second $4000 of Item 37)	3625.18
*	* * * * * * * * *	
42.	Normal Tax (1½% of Item 38)	60.00
43.	Normal Tax (3% of Item 40)	108.76
*	* * * * * * * * *	
46.	Tax on Net Income (total of Items 42, 43, 44 and 45)	168.76
47.	Less Credit of 25% of Tax on Earned Net Income (Item 30)	22.50
48.	Balance (Item 46 minus 47)	146.26
*	* * * * * * * * *	
50.	Total Tax (total of or difference between Items 48 and 49)	146.26
*	* * * * * * * * *	
53.	Balance of Tax (Item 50 minus Items 51 and 52)	146.26
*	* * * * * * * * *	

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES.

Kind of Property	2. Amount Received	***5. Depreciation	***8. Net Profit
Dwelling house at Globe, Arizona	600.00	325.00	275.00

* * * * * * * * *

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, and 16.

TAXES.

City of Phx	$15.00
Globe	152.60
Automobile	40.00
	208.20
½ community is	$104.10

[710]

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B.

Kind of Property	***5. Cost (exclusive of land)	***Amount of Depreciation Charged Off	
		7. Previous Years	8. This Year
Dwelling House at Globe	6500.00	650.00	325.00

[711]

ADJOURNED FIRST MEETING OF CREDITORS HELD DECEMBER 27, 1928.

Mr. LEWIS.—I would like to move the appearance of Mr. Moore at this time, as counsel for Judge Shute.

Mr. LEWIS.—I have prepared a statement here from the records of accounts of Judge Shute, just taking these accounts and running through them and preparing from them as complete, a statement as possible to determine from just what sources he received this money and to whom the money was disbursed; just what expenditures—or what amounts, could not be accounted for as far as expenditures are concerned, and just what amounts of income could not be accounted for. This is rather a detailed statement, and while we could examine Judge Shute in regard to each check and go through them that way, I thought it would be far wiser for the court to appoint an Auditor to use these statements and the accounts that are available, so the correctness of this could be determined. It is correct, so far as the records are concerned but I think it would be better for an Auditor to state as to the correctness of them. There are a number of questions I would like to ask Judge Shute as to certain items here before that is done, however. I am sorry to say I haven't enough carbon copies of certain things here, so I will let you look at these before I ask those questions. [712]

The REFEREE.—You mean you want an Auditor appointed for the benefit of the bankrupt, to

furnish a statement of these accounts as they stand?

The TRUSTEE.—I don't think that would be within the province of the court. It is all right to have the bankrupt examine and testify to them, but—

Mr. LEWIS.—I can use this statement. While it is detailed, it is comparatively simple, and I can run down all these items with him and explain each of them, but I felt that it would probably be more satisfactory for all concerned if someone would go over them, someone who was not connected with the case.

Mr. MOORE.—I had in mind that such an Auditor, if appointed, would represent the bankruptcy court and make a report direct to the referee and give him such assistance as he could.

The TRUSTEE.—There is no issue before the Referee where an accounting should be made.

Mr. MOORE.—I thought that was the very point, that he should account for his receipts and disbursements.

The TRUSTEE.—That will be an issue upon the question of discharge.

The REFEREE.—So far as procedure is concerned, if such a request were made it would simply go to credibility. If the Trustee asks that an auditor be appointed, then the Auditor would represent the creditors. There is no [713] objection to *to* appointing an auditor to assist you in presenting your evidence, but so far as being binding upon the court, he would simply be like any other witness.

The TRUSTEE.—I don't think that is necessary.

Mr. MOORE.—We just made the suggestion of an auditor to make a report for the benefit of the trustee and the court; to give such assistance as he could. What are the issues in this case?

The TRUSTEE.—None. This is merely a continuation of the examination of the bankrupt, and we are through so far as the examination of Judge Shute is concerned, and this request was made by his counsel—that he wished to get this explanation into the record. There is no issue to be tried here,—well, there is an issue, of course, concerning four small items. Then there will be an issue, or issue has been joined, rather, in the Federal Court,—that is, before the Judge,—on the question of discharge. Now when that comes up, all of this would be proper, but it cannot come before the referee; it must come before the Judge or the master appointed by him; isn't that correct, your Honor?

The REFEREE.—Yes.

Mr. LEWIS.—We will proceed, then, to examine Judge Shute.

The TRUSTEE.—The trustee has no objection to Judge Shute making any explanation he wants to or file anything he wants to, [714] but we would not want an Auditor appointed to be an Auditor of the court; if an auditor is appointed later, the scope of that audit would probably be a good deal wider than this. Now, Mr. Lewis, pardon my interruption.

(Testimony of George W. Shute.)

(Examination of the Bankrupt by Mr. LEWIS.)

Q. Prior to January, 1923, what was the source of your income, Judge Shute?

A. Would that be before I came down here, you mean?

A. Yes.

A. The main, and practically my only source of income was the salary I received as a public official; as judge of the Superior Court of Gila County.

Q. Did you have any outside source of income?

A. There might have been some, but it would be small—probably on the little investments I made; However, there were more liabilities than assets.

Q. During the period from January 1, 1923, to November 5, 1925, how is your account shown?

A. The first year I had no bank account. I received a salary and the check I received I used as cash in payment of bills; I opened my bank account some time during the second year I was here.

Q. The bank statements will show that. Now, during, the first year you were with Armstrong, Lewis & Kramer, what was your salary?

A. $5,000.

Q. The checks turned over to Mr. Nealon by Armstrong, Lewis & Kramer would show the details of your income? A. For the whole time?

Q. Yes. [715] A. Yes, that is correct.

Q. Now during the period you have been in Phoenix, you have borrowed money from time to time from the First National Bank of Arizona, have you not? A. Yes.

(Testimony of George W. Shute.)

Q. Mr. Nealon, I have a statement here that the Bank has prepared for me. Now I can get someone to go over there and verify the truth of this statement, if you wish.

The TRUSTEE.—This is merely the loan account of Judge Shute?

Mr. LEWIS.—Yes, and the payments on the loans.

The TRUSTEE.—Your statement is sufficient, Mr. Lewis. If it should become necessary later it can be verified.

Q. From time to time, Judge Shute, as Mrs. Shute's house in Globe was rented, you received checks from there?

A. Yes. The checks almost always came to me direct.

Q. Just how did you handle those checks?

A. Sometimes I gave them to her; sometimes I deposited them in my own account; this has been true nearly down to the present year. When her savings account was started more of an effort was made to deposit them in her savings account.

Q. In December, 1927, there is a personal check payable to A. E. England in the amount of $995. That check has been explained in previous examinations, but I will ask you to explain just how you obtained the money in regard to that?

A. That was in December, 1927?

A. Yes. [716]

A. That $900 came out of the $1900 deposit.

Q. You misunderstand me. This $995 was paid

(Testimony of George W. Shute.)

to A. E. England in December, 1927, at the same time as the $1900 which you explained before, but this was in regard to the Wentworth car which you have previously testified to. Will you explain in regard to the receipt of this money; was that your own money? A. The $995?

Q. Yes.

A. That may have been my own money. It was made up of four things, as well as I can remember them, in which I am corroborated by the Wentworths; there was the cashier's check of $400 or $500—I don't remember the exact amount—that probably constituted the first payment on the Wentworth car; then about three times after that they gave me, altogether, a sufficient amount to make up the amount that was paid in on the car. I don't remember the dates or the exact amount, but the check I gave was probably an accumulation of the amounts paid to me.

Q. Were these amounts handed to you in 1927 or 1928?

A. It may have been both; I can't say.

Q. In September, 1926, on the 11th, your bank statement shows a deposit of $500, and on the 17th the sum of $3400; that is all in 1926; can you account for those deposits?

A. Just give me a hint as to how we worked those out.

Q. From what you told me, I gathered that they came out of the money you received from Julian.

A. Yes.

(Testimony of George W. Shute.)

Q. What money did you receive?

A. Just what did I receive?

Q. Yes. [717]

A. I received $5,000.

Q. And these two deposits on September 11th and September 17th, 1926, were these deposits from this $5,000? A. Yes.

Q. What did you do with the balance?

A. As I stated once before, a thousand dollars of that amount I gave to my father and mother; $3,000 went into the mortgage on the home, and $1,000 I spent during that thirty-day period just prior to father's death and after his death; I don't know the exact amount of those expenditures but I know they ran high.

Q. And you testified that you deposited $3400; part of that would be by check. Now, the $1,000 you gave your father and mother, was that money the money you retained out of this $5,000?

A. I retained it out of the $5,000, yes.

Q. You gave certain sums, I understand, to J. D. Armour?

A. Yes, I let him have money from time to time.

Q. About when was that?

A. I cannot fix that very well; it was when he first went to the hospital, and he was in hard circumstances. I could get that very easily.

Q. When you and Mrs. Parry were discussing this, I understood it was about the end of the year 1926 and beginning of the year 1927; although the date he was sick is not important here. I was in-

(Testimony of George W. Shute.)
terested in knowing the amount of money you gave him, and whether it was in cash or by check.

A. The amount was not less than $500 nor more than $650; they were in both checks and cash. [718]

Q. At the time previous to this examination when you were discussing the large check you had received from Armstrong, Lewis & Kramer, as shown by the checks handed to Mr. Nealon by them, there was one on June 6, 1927, for $5,850; the bank statement shows a deposit of $500 on that date; just what did you do with the balance of $5,350?

A. You mean immediately, or ultimately?

Q. Well, as you know, you did not deposit the check, and you did dispose of it in other ways.

A. I know about what I did with it. Some of it I paid on a note to the bank; I paid the Old Dominion Bank out of it some $2,000 or $2,200; the rest of it I think went back into the bank account,—the checking account, although on that I am not clear.

Q. To further explain it—on June 7th, a check for $465.00 was deposited; what was that?

A. Was that the England check?

Q. Yes.

A. Part of that money went into my numerous car transactions; I gave England the cashier's check and he gave me a check in change,—that is Mr. Wedepohl did; England had nothing to do with it; if I remember he was away at the time.

(Testimony of George W. Shute.)

Q. What was the amount of the cashier's check you turned over to England?

A. I think it was $2,000.

Q. Then on June 24th of the same year there was a deposit of $2,968.43; what was the course of that; is that connected with this transaction?

A. I think it was; it was made for the settlement with the Old Dominion Bank on the note I owed up there, and [719] was probably all the rest of that so-called Beardsley fee that remained.

Q. Would that item have been received by you at the time you turned over that $5,850, being in payment of these loans and the cashier's check?

A. I don't get that.

Q. You testified that you had paid certain loans at the bank and made a $500 deposit; and you also testified you received a $2,000 cashier's check which you turned over to England, from which you received as change an amount which was deposited the following day. Now, this $2,968.43—would that be the balance of that?

A. I take it that it was.

Q. In December, 1927, your bank statement shows a deposit of $1900? A. Yes.

Q. Where did that come from?

A. It came from a $2,000 check that came from Goswick in that month; I think it came December 30th or 31st, if I remember correctly.

Q. During this period from November 5th, 1925, to the date of your adjudication, did you have oc-

(Testimony of George W. Shute.)

casion to deposit sums in cash to Mrs. Shute's savings account?

A. Quite frequently; the savings account will show every one of those items.

Q. Judge Shute, for a period of time in 1925, 1926 and 1927, you, I believe, were renting a home?

A. Yes.

Q. We find during that period numerous checks, personal checks, drawn payable to yourselves, on approximately the *d*ame dates of every month; is there any connection between this and your rent? [720]

A. Yes, I think you will find they were all around $75 and were paid to the bank, from whom I rented.

Q. We find, in 1927, a few checks payable to yourselves that seemingly have no connection with your statement as prepared by Mr. Losh. Now, those checks—for what purpose were they used?

A. They may have been used for drawing out cash; I did that sometimes.

Q. Judge Shute, in checking over these accounts, in your checks, as against the payments to the bank on account of loans, and as against Mrs. Shute's savings account, we find occasional checks payable to yourself drawn on the same date as the payment to the bank on account of loan or deposit in Mrs. Shute's savings account; when you were drawing checks to yourself, does it bring to your mind that that check was for the purpose of doing something of that sort, such as depositing in Mrs. Shute's sav-

(Testimony of George W. Shute.)

ings account, and paying the bank, or drawing cash for yourselves?

A. Ordinarily it might indicate a cash transfer either to the bank or to the savings account, if I were making a transfer from my account to the savings account, I did that quite frequently. There might be exceptions to that rule.

Q. I believe that covers practically every question involved. We find there are certain income items, taking the figures directly from these papers, which cannot be accounted for; they amount to approximately $2900. In such cases perhaps Judge Shute can help us. We find, Judge Shute, that from time to time you retained cash and a short time afterwards there was a deposit made, not in the same amount necessarily, but of some amount nearly [721] like it. We can find no source of that, and can find no way of accounting for it.

A. Well, take for instance, I would receive a dividend check from the firm. Up until this year, about half the time I would send that check down to the bank by one of the girls in the office, and have only a portion of it deposited, taking the balance in cash. That cash would be used by me personally, or I would give it to Mrs. Shute for running the house; then another dividend check might come in, and I would deposit the aggregate of this, back into the bank account; that is the way those amounts unquestionably arose.

Mr. MOORE.—They did not represent a separate income?

(Testimony of George W. Shute.)

A. No.

Q. In going over the period here for which we have checks, statements, and such things as would make it possible for us to determine them—that is from November 5th, 1925, up to the time of the adjudication, we find that Judge Shute has retained money out of his various deposits, and in adding up these amounts from the bank statements it amounts to the sum of approximately $7500. During this same period, in looking over his personal checks we find checks drawn to cash. Now, of these checks, some can be accounted for; I have made up a sheet here so you will have something to work from. The ones of which no accounting can be made amount to $2200; that means that in the two and a half years there is about $9500 of which no accounting has been made; in explanation of that Judge Shute has just said that he would retain money from these dividend deposits and give money to Mrs. Shute. Was it your custom, Judge Shute, to give her this money in cash? [722] A. Yes, always in cash.

Q. We find that over this period of two and a half years that over $2,000 is not accounted for. Where did you say that money went?

A. It had gone to take care of household expenses, or had been used by me in some of these wild things, —or things that look wild now, during those years. For instance, money that was given to Bud Armour. I might say that in all this time, in little amounts of two, three, five, ten, fifteen dollars, etc., I was out probably about $50 a month during that whole

(Testimony of George W. Shute.)

time, that would go to Tom, Dick and Harry, not even figuring the larger amounts.

Q. In this statement we have explained the items that did not explain themselves on their faces, and I have one statement here that is more or less a recapitulation of all the information we can gather from these checks, statements, etc. Now, for the purpose of clearing up the differences that we had earlier in the examinations, when some of these things could not be understood, and which we tried to determine from these checks, I feel that if it is acceptable to you, we would like to ask that this be put into the record as being the financial statement of Judge Shute during this period.

The TRUSTEE.—We have no objection to that. May I ask if you wish to introduce the loan sheet as well?

Mr. LEWIS.—Yes, I think so, as so many references are made to it; the savings account is already in, and this will show the Armstrong, Lewis & Kramer statement, which is really a writing out of what we already know. [723]

The TRUSTEE.—There is no objection to that.

The REFEREE.—Statement of receipts and disbursements, consisting of 14 pages received and marked Bankrupt's Exhibit No. 1. Statement of loans and payments thereon, from the First National Bank of Arizona, is also received and marked Bankrupt's Exhibit No. 2.

(Testimony of George W. Shute.)

(Examination of Bankrupt by TRUSTEE.)

Q. From what sources did you derive the information that is incorporated in this statement, Bankrupt's Exhibit No. 1?

A. That is the one you have been talking about?

Q. Yes.

A. I did not prepare that; Orme made that up.

Q. You have examined it?

A. No, we talked it over this morning.

Mr. LEWIS.—I will explain something to you. While it is true you have not examined it, you have examined the sheets from which it was prepared. These sheets I have gone over and asked you about from time to time have been the rough draft from which this was prepared.

A. All right; then I have examined it.

Q. From what source was the information derived that is contained in here and contained in the rough draft?

A. From every source we could come to.

Q. Will you itemize these as best you can?

A. The checks, the stubs, my own memory, research in the bank records, going over the savings account; conversations with people I have done business with; that is the way it was finally made. [724]

Q. It was made up from no book records that you had kept prior to that time, other than the books of Armstrong, Lewis & Kramer and the bank statements and stubs furnished?

A. You mean a separate independent set of books?

(Testimony of George W. Shute.)

Q. Yes.

A. No.

Q. This statement has been prepared within quite a recent period? A. Yes, sir.

Q. About how long a period has it been that you have been working upon gathering the details and putting it into form?

A. I would say two and a half or three months.

Q. Just in a general way? A. Yes.

Q. You testified about the $995 check to A. E. England—that it was made up in different amounts paid to you at different times.

A. Do not misunderstand me, Mr. Nealon.

Q. I merely want to get it cleared up.

A. That check was probably my own personal money. In other words, as this money would come along, in one, two or three payments, I kept it, and then when the whole thing was consummated I turned over my check in that amount.

Q. The $995 payment was made by your own check? A. Yes.

Q. Over some period of time, either before or after you had made this payment to England, you received the money from the Wentworths?

A. Yes.

Q. In what form did that money come? [725]

A. It was a cashier's check for either $400 or $500. I don't know now, and I asked Miss Wentworth only three days ago if she remembered, but she did not remember the amount. The difference between this $400 or $500 she gave to me in three

(Testimony of George W. Shute.)

cash amounts, aggregating $995, which was the final purchase price of the car.

Q. Let me ask you if you are not mistaken in that. That was a Hudson car, was it not? A. Yes.

Q. Isn't the price $1495, or thereabouts?

A. Whatever it was; this was a different kind of a car.

Q. I was merely trying to refresh your memory.

A. Yes.

Mr. MOORE.—You are talking about the Wentworth car?

A. Yes.

Q. Do you remember the amount of it?

A. I think it was $1395.

Q. The difference between your check here of $995 and the purchase price of the car was $400 or $500; do you recall what that was?

A. It was probably a cashier's check.

Q. Wasn't that the proceeds of a car formerly owned by her?

A. No, the car they had, England would not take on trade, but he did take it to sell it.

Q. The total amount paid to you was $1395?

A. Whatever the price of the car was, and I think it was $1395.00.

Q. How do you recall about the time this first $400 was paid to you?

A. It must have been between the 1st of October and [726] the 1st of November for this reason. We had gone hunting and the Wentworths had gone

(Testimony of George W. Shute.)

with me, and we talked then about the purchase of this car.

Q. The purchase followed that trip?

A. Yes, that was the basis of the negotiation.

Q. If my memory is right, your check was dated December 30th or 31st, for this $995; you had paid the $400 previously?

A. I think this cashier's check was when the transaction was first made; it may have been payable to England.

Q. Anyway that particular item did not appear in your bank account? A. No.

Q. Now, is it your recollection that all these payments were made prior to the giving of that $995 check?

A. I am not sure. It may have run over into the next year.

Q. In what form were those payments made?

A. All in cash.

Q. Did you deposit them? A. The cash?

Q. Yes.

A. I don't know; I can't tell. From checking over the deposits I can't tell; it would depend on the dates.

Q. Now, the next item that attracted my attention was the Julian item of $5,000; that has not been mentioned before.

A. I don't believe I testified about that.

Q. The $3400 deposit was new? A. Yes.

Q. Will you just tell us about that transaction.

A. That was involving the purchase of the Monte

(Testimony of George W. Shute.)

Cristo mine. Joe Bandhaur was Julian's field man, a sort of [727] prospector, geologist and mining engineer, and had been employed by Julian for many years. My first touch with it was when Bandhaur asked me to assist him in introducing Mr. Thayer and inducing him to sell the Monte Cristo to Julian. We talked the matter over, and it resulted in the transfer from Mr. Thayer to Julian of a majority of the stock, and during the negotiations Bandhaur said that C. C. would pay $10,000 for putting the deal over, as from the reports on it, this was one of the kind of things he wanted to put on the market. It was finally arranged that if the deal was finally consummated and Julian would pay $10,000, we would split it, $5,000 to me and $5,000 to Joe, and if this should come to pass, he didn't want Julian to know that he was coming in for a part of the commission.

Q. *Do* Julian paid you the $10,000? A. Yes.

Q. And you paid Bandhaur $5,000 of it?

A. Yes.

Q. Had you previous to that time advanced this amount you speak of to Bandhaur?

A. No, that was my first contract with him.

Q. Now, when was that?

A. I believe it was in July or August of 1926.

Q. September, perhaps? A. Yes.

Q. How was that payment made to you?

A. In cash.

Q. In currency? A. Yes.

(Testimony of George W. Shute.)

Q. By whom? A. By C. C. Julian himself. [728]

Q. How was the payment to Bandhaur made?

A. The same way.

Q. In Phoenix? A. Yes.

Q. Then how did you dispose of it, the immediate disposition of it, I mean?

A. The account will show it very clearly, I think.

Q. I haven't examined it.

A. I paid Mrs. Holmes $3,000; then, that was about the time of all the trouble at home, and I gave $1,000 to father and the expense of the three deaths that occurred during that month.

Q. Mr. Lewis was a little too quick for me in asking about that deposit of $3400 on that money some days later.

A. I don't remember the amount.

Q. There was a $500 item?

Mr. LEWIS.—I have made up a sheet here of explanations; it shows as item 82 on Exhibit "B,"

Q. Well, you seem to have those amounts accounted for, so I won't trouble any more about that. Was that the end of your transaction with Julian?

A. No, I have represented him ever since, up to the present time.

Q. That would be Armstrong, Lewis & Kramer?

A. Yes.

Q. Have you ever had any other transactions of a like nature since that time?

A. No, I think that is the only one of that kind.

Q. Now, this cashier's check to England in June,

(Testimony of George W. Shute.)

or about there; for what reason was that given in that form, if you recall? [729]

A. I have told you about the indebtedness to the Old Dominion Bank. I think the aggregate amount of that was something like $3,000; that is my best recollection. I had been talking with Mr. Wilson about a settlement at about this time. The main part of the indebtedness was interest, and he had agreed he would settle on a basis of something between $2100 and $2300. This so-called Beardsley fee came in at about that time, and I didn't want to deposit it as the Bank would learn of it and there I would be without my settlement, so I took cashier's checks for it so it wouldn't appear through the bank.

Q. Then did you have more than this cashier's check that you turned over to England?

A. The accounts will show that. As soon as I made the arrangement with the Bank, I sent the Bank a check for $2,000; I lacked $200 of making the amount, and sent them post dated checks of $100 each to make up the difference.

(Examination by Miss BIRDSALL.)

Q. I think you testified you had loaned Bud Armour between $500 and $650. A. Yes.

Q. As I understand it, that was all repaid by Mr. Armour?

A. It was not repaid. I never loaned Bud this money; he was sick and in bed, without a dollar, and what I gave to him was without a thought of ever getting it back; I knew he would never be able

(Testimony of George W. Shute.)

to get well and I had no hope of ever getting a penny of it back.

Q. I think you testified they were all repaid to you.

A. I surely never testified that he had ever repaid me anything. [730]

Q. I think you stated that it was repaid to you at different times.

A. He never paid me a single penny.

Q. It is in the record, I am sure.

A. If I ever testified to that, I must have been crazy.

Q. This $500 you sent Joe Bandhaur in December, 1926, or 1927, that you testified to—

A. Yes.

Q. Did that have anything to do with that Julian transaction? A. No.

Q. He still owes that amount of $500?

A. No. Joe Bandhaur telephoned me one day about some stock of the Western Arizona Gold Mines; he had a friend who wanted him to put in $1,000 and would guarantee that the stock would go to 50¢; he said if I would risk $500 he would risk $500, to make up the $1,000 and I did it.

Q. Didn't you ever get the stock? A. No.

Q. Then he really owes you the $500?

A. No. I simply put it in with him on this venture; we both lost our money, that's all.

Q. You have no way of knowing?

A. He told me he had.

Q. You have no receipt or anything?

(Testimony of George W. Shute.)

A. Nothing; he may have sent me a letter.

Q. Was that subsequent to the Julian transaction? A. Long after.

Q. Where is Joe Bandhaur now?

A. In Los Angeles, or Nevada, perhaps.

Q. His home is still in Los Angeles? A. Yes.

Q. I think that is all, now. [731]

TESTIMONY OF A. E. ENGLAND, FOR TRUSTEE.

Mr. A. E. ENGLAND testified as follows at adjourned meeting of creditors held May 29, 1928. (Examination by TRUSTEE.)

I have a copy of the order; I have brought the contract; I didn't bring the books. I have a copy of the contract; there are so many of the books. This was last year's business and the books are all stacked away; there was a crowd of people there in the office, and I just had to come away and leave them. This contract is dated November 25, 1927, and purports to be a sale from England Motors Company to G. W. Shute for 1928 Hudson Sedan, No. 495579, Serial Number 799342, new, six-cylinder; the retail selling price was $1775. I would have to look at the sale price to find the selling price to Judge Shute. I presume they would show it. I am not the bookkeeper, and I would be glad if you would hold the meeting down there where we could look at the books; they are last's year's records and they are stacked away in the storeroom.

(Testimony of A. E. England.)

If you could meet at my office some time, at your pleasure, and my bookkeeper could tell you anything you wanted. I am not a bookkeeper, and don't keep those details in my mind.

The TRUSTEE.—The only way we can do this is to have these records produced for the court; this is just as much as court, Mr. England, as if you were in the courthouse.

A. Well, I came here unprepared in that respect. I don't think there have been any payments made on that contract, but I am not prepared to give you any [732] details on it from memory; I don't know whether or not $1500 is due on that contract.

Q. When can you be prepared to produce these books so we can go into this transaction of the cars?

A. When would you want them?

Q. You were supposed to have produced them here at 11:30 this morning.

A. There are only two of us down there. We would just close our business if we did that. Of course if you demand it I will do it.

Q. We want the witness to testify as to what the books show on this. A. I will get them.

Q. Where is that car?

A. In my basement.

Q. How long has it been there?

A. Several weeks.

Q. Could you set any approximate date?

A. I don't know.

Q. Why was it placed in your basement?

(Testimony of A. E. England.)

A. Well, Judge Shute was having some legal procedure, and—

Q. Do you make a claim on it now?

A. It is in my possession.

Q. Do you claim to own that car as your own property, as the property of your company?

A. It is just as much so as it is in any conditional sales contract.

Q. You do not claim to own it except as a contract? A. No.

Q. You do not know what is due? A. No. [733]

The REFEREE.—I think you will just have to bring your books up here to continue this examination.

A. I will have to go down and just close up, then. How long will this hearing last?

The TRUSTEE.—That is hard to tell; it depends on what arises; you could produce the loose-leaf ledger, that is the sheets that pertain to the proceedings with Judge Shute; that would satisfy me for the present, as to the ledger, but the books of original entry and documents and papers in regard to the cars purchased by Judge Shute from you, and records of all cars sold for him by you; I would like those records.

Miss BIRDSALL.—You were asked in regard to the cars of Judge Shute. Judge Shute has said something about an Essex purchased from Mrs. Shute—

A. That is her personal car.

(Testimony of A. E. England.)

Q. We want that record, too.

A. I will bring that then, also.

Q. Also the car that was purchased by the Wentworth's at Globe.

A. I will mark down what you want. You want the sheets pertaining to Judge Shute's transactions?

Q. All transactions of every nature, including Mrs. Shute's car and the Wentworth car.

A. Every customer has a loose-leaf page.

Q. You have a cash-book? A. Yes.

Q. Do you have a sales-book?

A. Just our records. [734]

Q. Well, we want those books. A. All right.

Q. What shows the down payment?

A. The ledger. I will have the bookkeeper come down; I don't know anything about these things; he will have to explain them to you.

Q. You are the witness.

A. Well, I don't know anything about it.

Q. Will this record that you are to bring in show the purchase price of cars that you take in?

A. Yes, this record goes to the Government every year, so it has to show details.

* * * * * * * * * * *

Q. Mr. England, did you bring the books we asked for this morning?

A. Yes, Mr. Wedepohl, bring the books over here.

Q. These are the ledger sheets? (Indicating.)

A. Yes.

(Testimony of A. E. England.)

Q. You have not the ledger here?

A. No, you stated I could bring these sheets.

Q. These are those? (Indicating.) A. Yes.

Q. What is this? (Indicating.)

A. That is the cash-book.

Q. What is this? (Indicating.)

A. That is the car record book.

Q. I will ask you to turn to entry on the cash-book of December 11th, folio C–227, and read the entry as it appears on that page in regard to V. L. Wentworth.

A. Mr. Wedepohl, will you read the entry on that page? [735]

Mr. WEDEPOHL.—(Reading:)

V. L. Wentworth $400.00.

Q. You received a cash payment made on that date? A. Yes.

Q. That doesn't show to whom it was paid?

A. No, sir.

Q. This was apparently for V. L. Wentworth?

A. Yes.

Q. There is nothing to show the form in which this was paid? A. Not on that sheet.

Q. Is there on any other sheet?

A. We would have to refer that back to our deposit slip on the First National Bank.

Q. Do you keep your account in the First National Bank of Arizona? A. Yes.

Q. Does the deposit slip show by whom the check was issued?

A. No, it shows who it was credited to.

(Testimony of A. E. England.)

Q. Turn to entry of January 3d, folio 1; is that a credit to the same account?

A. $995.00; accounts receivable.

Q. What does that mean?

Mr. WEDEPOHL.—The $995 on this last item together with the $400 item mentioned in the other book aggregated $1395 that we got in cash at these two times for a Hudson sedan, 4–door sedan.

Q. I notice this comes under a column marked "Accounts Receivable"; this would mean that this was credited to "Accounts Receivable"; does it, or does it mean merely [736] to V. A. Wentworth on your ledger?

Mr. WEDEPOHL.—The Wentworth account is one of the accounts receivable.

Q. There is nothing on your books to indicate that this was paid in person, or by whom, other than V. L. Wentworth?

Mr. WEDEPOHL. — The bank deposit should show that Wentworth paid it.

Q. Do you keep a copy of the deposit slips?

A. Yes, sir.

Q. But you do not enter on your deposit slips the name of the party giving the check?

Mr. WEDEPOHL.—Just credit it to their account.

Q. You mean on the duplicate deposit slip?

A. The duplicate is the same as the original.

* * * * * * * * * *

Q. I will call your attention to your entry "C. I. T. payments (3) on September 30, 1905."

(Testimony of A. E. England.)

Mr. ENGLAND.—That was the three payments in arrears. Judge Shute took up that contract and he paid that; it was $61.08 a payment.

Q. Who executed that contract?

A. Sheldon Downey, a son of the postmaster at Miami.

Q. And Judge Shute paid that amount there?

A. Yes.

Q. Where on your records does it show the consideration paid for that car.

A. It doesn't show. It was turned over and he made his payments to the Finance Company; he just assumed that contract and paid it out. [737]

Q. So you had no dealings with him as far as that car was concerned? A. We sold it to him.

Q. Did you get any consideration? A. No, sir.

Q. You have nothing from him at all?

A. No, sir.

Q. Do you know whether he paid anyone anything? A. He paid the contract out.

Q. Did he pay anything other than the contract?

A. I sold him the car.

Q. Had you repossessed the car? A. Yes.

The TRUSTEE. — We would like to ask that copies of those sheets be made so they may be filed, in lieu of the originals.

The REFEREE.—Will you do that?

Mr. ENGLAND.—I will make copies of those sheets so they may be filed in lieu of the originals.

(Resuming his testimony.)

I have had four or five car transactions with

(Testimony of A. E. England.)

Judge Shute. The last one was an Essex,—this month, the 18th, a car was taken in as part payment, at the value of $400, and contract taken for $660; that $400 was on a Hudson car not purchased from me; my last transaction prior with Judge Shute prior to that time was November 30th; that transaction begins quite a ways back. Judge Shute had taken up that Downey Hudson coach, and one day a fellow came into my place who wanted a good used Hudson coach. [738] I didn't have one of my own in stock. He wanted to buy a car badly, and I sold him Judge Shute's car. He usually leaves his car with us and walks down to his office, and we had talked several times about getting him another car, and this man was going to leave for Oregon and Washington, and he wanted a car right now, so I showed him Judge Shute's car, without even asking the Judge's permission and worked up a deal with him; I told Judge Shute I had a good opportunity to turn over his car; he asked on what basis, and I said I would make it all right with him. I gave him the discount and this money and he took one of the new sedans. I allowed him $404.47 discount; that was arrived at by reconciling the books of our company. That fellow gave me a thousand dollar bill; I have it yet. I repeat it; I have it yet. I got a thousand from him, but I gave him back about $300. I think the $700 was credited to Judge Shute's account. Then the Judge went bear-hunting and left the four-door sedan in the basement and another fellow came along and he wanted a car.

(Testimony of A. E. England.)

I didn't have one in stock. This was a Los Angeles man and he wanted a Hudson, and we didn't have one on the floor of any description. I went down to the basement and showed Judge Shute's car to the man and he took it. For that I got $1185 out of the Finance Company; we wrote him a contract, got $100 in cash and a note for $100 to be paid later, making $1385, so I realized $1385 on that. When Judge Shute got back I got him another late model four-door sedan, one of the new 28's which were in then.

(Examination by Miss BIRDSALL.)

The Essex which was brought prior to this last one was in August of last year; that is Mrs. Shute's car, [739] and is completely paid for. It is right here. $335 represented contract that came out of Mrs. Shute's old Essex. We took that in and sold it for $335 on contract; we got $90 in a note and $50 cash, that the other lady paid. We haven't cleared up all these details. That is what we would have if we had all our money. Judge Shute paid $250 on that car; that is all he paid; that paid the car out; after we got all the money we got $775.00. That transaction was carried on this sheet that I have been referring to as Judge Shute's account; it was not a separate account from Mrs. Shute's. That $250 payment was made September 6th, I think; the bill was August 31st. Judge Shute made a subsequent payment of $250 on November 26th, which was credited toward the Hudson car. [740]

Creditor's Exhibit No. 31 admitted in evidence

and comprising with creditor's exhibits numbered six, eight, nineteen and twenty (being eight canceled checks introduced in evidence), consists of the following:

(1) Check-book stubs numbered 1 to 643 (those to 634 being to date of bankruptcy, April 17, 1928) of the First National Bank of Arizona, purporting to cover a period from Nobember 14, 1925, through April, 1928. Of these numbered stubs approximately 12 are entirely blank, with no notation denoting they are void, and a large per cent bear no explanation of nature or purpose of payment, a considerable number having thereon only date and amount without name of payee or further notation.

(2) Approximately 780 canceled checks which cover roughly same period as check-book stubs above. The check stubs and canceled checks only partially correspond, for there are approximately 282 unnumbered canceled checks for which there are no corresponding check stubs, and approximately 126 check stubs for which no canceled checks appear. A large per cent of these canceled numbered checks with stubs to match, as well as the canceled unnumbered and stubless checks, are made [741] merely to "Cash," with no memo to designate purpose for which drawn, and of the 126 stubs for which no canceled checks appear, 19 are payable to "Cash," "Bearer" or "Self."

Of these canceled checks for the year 1926 there appear 18 aggregating a total amount of $335.00, payable to "Cash." For the year 1927 there are 65 canceled checks aggregating a total amount of $2296.80, payable to "Cash," and for the period from January 1, 1928, to April 17, 1928, there are 15 canceled checks aggregating a total amount of $717.60 payable to "Cash."

(3) Original bank statements consisting of 25 sheets, and copies of bank statements consisting of 8 sheets. The 25 sheets of original bank statements, together with 2 sheets of the copies, cover statement showing deposits and withdrawals of bankrupt in the First National Bank of Arizona for the period starting September, 1925, and ending April 20, 1928. The other 6 sheets of copies of bank statements cover statements showing deposits and withdrawals of bankrupt in the First National Bank of Arizona for period commencing January 16, 1924, and ending December 12, 1925. The bank statements and copies contain no data except amounts of deposits and withdrawals, and indicate some 66 items of cash withdrawn in the period between November, 1925, and April 17, 1928, for which no check stubs or canceled checks appear. These bank statements show that total deposits in such account from January 16, 1924, to April 20, 1928, aggregate the sum of $38,028.57, and

that the total bank deposits for the year 1926 are $11,595.64, for the year 1927 are $13,801.78, and for the year 1928 up to April 17th are $2,075.00.

(The data comprising this exhibit was introduced in evidence contained in a pasteboard box of the dimensions of approximately 15″x18″x2½″.) [742]

[Endorsed]: Filed Apr. 16, 1929.
Approved and Filed Aug. 27, 1929. [743]

[Title of Court and Cause.]

ORDER APPROVING STATEMENT OF EVIDENCE.

The statement of evidence with statement thereto made by appellants under direction of the Court, having been duly lodged in the office of the Clerk of this court by appellants, the said statement of evidence with amendment thereto hereunto attached is hereby approved by the Court, and is made a part of the record, and the same contains all of the testimony in the case in narrative form except such as is given by question and answer in order that same might be clearly understood.

Where the testimony in the foregoing statement of evidence is set forth in form of question and answer and in the exact language of the witness, it is so set forth under the direction and order of this Court so that the evidence might be clearly understood.

The petition of appellants for transmittal of Ex-

hibit 31 to the Circuit Court of Appeals was denied because unnecessary, and counsel were directed to make a statement of what said exhibit consisted, leaving it to the Circuit Court of Appeals to order same transmitted if deemed advisable.

Dated this 27th day of Aug., 1929.

WM. H. SAWTELLE,
United States District Judge.

[Endorsed]: Filed Aug. 27, 1928. [745]

[Title of Court and Cause.]

PETITION FOR APPEAL TO CIRCUIT COURT OF APPEALS FROM ORDER GRANTING DISCHARGE TO BANKRUPT AND ORDER ALLOWING SAME.

To the Honorable WILLIAM H. SAWTELLE, Judge of the United States District Court for the District of Arizona:

Thomas W. Nealon, trustee in bankruptcy of the above-named bankrupt and estate, and J. J. Mackay, a creditor of the above-named bankrupt and estate, each conceiving himself aggrieved in the hearing upon the matter of discharge herein and by the final order and decree entered on the 12th day of January, 1929, in the above-entitled proceeding, overruling the objections of the trustee and creditor herein to the discharge of the bankrupt and the order and decree of said Court granting the said bankrupt a discharge in bankruptcy from his debts, do hereby

petition for an appeal from the said order, rulings and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignments of error filed herewith, and pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such Court in such cases made and provided, and your petitioners further pray that the proper order relating to the required [746] security to be required of them be made.

THOMAS W. NEALON,
Trustee.
JOHN L. DYER,
ALICE M. BIRDSALL,
Solicitors for J. J. Mackay,
Creditor of Bankrupt.

ORDER.

The foregoing appeal is hereby allowed upon giving bond as required by law for the sum of Two Hundred Fifty Dollars ($250.00).

Dated February 9th, 1929.

WM. H. SAWTELLE,
District Judge.

[Endorsed]: Filed Feb. 9, 1929. [747]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Comes now Thomas W. Nealon, trustee of the above-named bankrupt and estate, and J. J. Mackay, objecting creditor in the above-entitled cause, and file the following assignments of error, upon which they will rely upon their prosecution of the appeal in the above-entitled cause from the order, rulings and decree made by this Honorable Court on the 12th day of January, 1929.

I.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the First Specification of grounds of opposition to bankrupt's discharge which was as follows:

That the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that he has knowingly and fraudulently while a bankrupt concealed from his trustee property belonging to his estate in bankruptcy, as follows:

> (a) One Hudson car, described as 1928 Hudson Sedan, Motor Number 495579, Serial Number 799342, owned by said bankrupt at the time of filing his petition in bankruptcy, the value of said Hudson Sedan being, to wit, the sum of $900.00.

(b) One life insurance policy upon the life of [748] the bankrupt as follows: Policy No. 3310053, said policy having been issued by the Mutual Life Insurance Company of New York dated May 25, 1924, being one in which he had the right to change the beneficiary without the consent of the beneficiary named therein, and which life insurance policy had a cash surrender value at the time of the filing of the debtor's petition in bankruptcy, of $746.85.

(c) A savings account in the First National Bank of Arizona at Phoenix, Arizona, being Account No. 19061 in the name of Jessie M. Shute, wife of said bankrupt, in which account there was on deposit at the date of filing said petition in bankruptcy, $1162.30, which was the community property of the said bankrupt and his wife, and by further concealing from the said trustee the existence of one promissory note of Joseph E. Noble paid by said bankrupt from said account, and one promissory note for $1500.00 loaned from said account to one Leslie Creed.

(d) One certain contract entered into by and between one Wesley Goswick and the bankrupt on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of $20,000.00 out of the proceeds of the sale by the said Wesley Goswick of a cinnabar mining property to one L. E. Foster for the sum of $200,000.00, and payments having been made to

the bankrupt thereon of the sum of $500.00 on December 8, 1926, $1000.00 on the 8th day of June, 1927, $2000.00 during the [749] month of December, 1927, and subsequent to the adjudication in bankruptcy, in, to wit, the month of June, 1928, a further sum of $8000.00 on said contract, leaving payments amounting to $16,-500.00 due and to become due on said contract to the bankrupt at the time of the filing of his petition in bankruptcy.

(e) The following described real property in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and south half of Lot 5, Block 45, East Globe Townsite, of the value of, to wit, $5000.00, which said property was up to the time that the title thereof passed to your trustee by operation of law on the filing of the bankrupt's petition in bankruptcy, the property of said bankrupt and purchased with funds acquired by him subsequent to the marriage of said bankrupt to his wife, Jessie M. Shute.

(f) One Essex car described as Essex Coach Serial Number 640003, the value of, to wit, the sum of $600.00.

(g) The sum of $995.00, being the amount which said bankrupt received as a payment from one Virginia L. Wentworth for money he paid for an automobile for her.

(h) The sum of $250.00, being the amount of a deposit made by the bankrupt with one Arthur LaPrade during the month of Decem-

ber, 1927, for the purpose of investment and which subsequent to the adjudication in bankruptcy was returned [750] to said bankrupt by said Arthur LaPrade.

(i) One phonograph of the value of approximately $200.00.

The total amount of the concealment of property from your trustee as enumerated above being of the value of, to wit, $28,879.35.

The trustee and the objecting creditor, J. J. Mackay, charge the fact to be that said bankrupt has so concealed from said trustee said property collectively and also as to each separate item of the above-described property.

II.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Second Specification of objections to bankrupt's discharge, which was as follows:

That the said bankrupt has committed an offense punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following question propounded to him under ex-

amination at the first meeting of creditors, as answered by him, to wit:

Q. You have a car at the present time, have you not?

A. I bought a car when I came down here, [751] a Hudson, from my brother-in-law, and I paid $100 a month on it until it was paid for; then I traded it in on another car from England, and then traded that in on another one, which is the car I have now; there is probably $1,000 due on it.

These objectors charge at the time said question was asked and answered by said bankrupt he had been first duly sworn by said referee and said testimony was given under oath; that the answer above set forth was false and untrue and knowingly and fraudulently made, for the purpose of concealing property from the trustee.

III.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Third Specification of objections to bankrupt's discharge, which was as follows:

That the bankrupt has committed an offense punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false

account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

> Q. (Referring to Hudson car owned by said bankrupt at the time of filing his petition in bankruptcy.) You have made no payments except the work you have done for him?
>
> A. That is about the way it would figure out; I don't think I made any cash payments at all. [752]

These objectors charge at the time said questions were asked and answered by said bankrupt he had been first duly sworn by referee and said testimony was given under oath; that the answer above set forth was false and untrue and knowingly and fraudulently made, for the purpose of concealing property from the trustee.

IV.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Fourth Specification of objections to bankrupt's discharge, which was as follows:

That the bankrupt has committed an offense punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has know-

ingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

> Q. You did not schedule it? (Referring to Hudson car owned by said bankrupt at the date petition in bankruptcy was filed.)
>
> A. I turned it back.

These objectors charge at the time said question was asked and answered by said bankrupt he had been first duly sworn by said referee and said testimony was given under oath; that the answer above set forth was false and untrue and knowingly and fraudulently made, for the purpose of concealing property from the trustee. [753]

V.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Fifth Specification of objectors to bankrupt's discharge, which was as follows:

That the bankrupt has committed an offense punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered

a false account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

> Q. Since that time (January, 1924) how much have you received from the firm's business? (Referring to the firm of Armstrong, Lewis & Kramer.)
>
> A. Well, I can only give an approximation, but I think it is pretty close. I think the first year I received about $5500; that was 1924. In 1925 I received between $5500 and $6000; I think in 1926 it was about $8,000; I think the last year I received somewhere in the neighborhood of $10,000; that is about right, I think.

These objectors charge at the time said question was asked and answered by said bankrupt he had been first duly sworn by said referee and said testimony was given under oath; that the answer above set forth was false and untrue and knowingly and fraudulently made, for the purpose of concealing from the trustee his true income and receipts. [754]

VI.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Sixth Specification of objections to bankrupt's discharge, which was as follows:

That the bankrupt has committed an offense

punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

> Q. How much have you drawn from the firm (being the firm of Armstrong, Lewis & Kramer) since the first of the year?
>
> A. I think about $500 a month. There has been no dividend in April.

These objectors charge at the time said question was asked and answered by said bankrupt he had been first duly sworn by said referee and said testimony was given under oath; that the answer above set forth was false and untrue and knowingly and fraudulently made, for the purpose of concealing from the trustee his true income and receipts.

VII.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Seventh Specification of objections to bankrupt's discharge, which was as follows: [755]

That the bankrupt has committed an offense

punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

> Q. In addition to that (referring to receipts from the firm of Armstrong, Lewis & Kramer) then, there should be other amounts that you have received in order to make the books complete?
>
> A. That depends on the way you look at it. You will remember I told you about the little block of stock we sold after we came down here. There was also a little Mrs. Shute owned in the Iron—Blossom, I think it was called; there was 100 shares of that. We sold that and I used the money. There may be two or three small instances like that, but except in very small items of that kind, the income was from the firm.

These objectors charge at the time said question was asked and answered by said bankrupt he had been first duly sworn by said referee and said testimony was given under oath; that the answer above

set forth was false and untrue and knowingly and fraudulently made, for the purpose of concealing from the trustee his true income and receipts.

VIII.

That the United States District Court for the District or Arizona erred in overruling and not sustaining the Eighth Specification of objections to bankrupt's discharge, which was as follows: [756]

That the bankrupt has committed an offense punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

> Q. During all of this period (period said bankrupt had been with the firm of Armstrong, Lewis & Kramer) did you receive any large sums of money from any other source, other than those you have testified to?
>
> A. I think I have testified to all of them, either at this hearing or the other one.

These objectors charge at the time said question was asked and answered by said bankrupt he had

been first duly sworn by said referee and said testimony was given under oath; that the answer above set forth was false and untrue and knowingly and fraudulently made, for the purpose of concealing from the trustee his true income and receipts.

IX.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Ninth Specification of objections to bankrupt's discharge, which was as follows:

That the bankrupt has committed an offense punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting [757] of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following questions propounded to him under examination at the first meeting of creditors, as answered by him:

Q. You have no interest in any mining property? A. None at all.

Q. Any mining claims? A. No.

Q. Have you represented any companies over there in any way as counsel from whom you have received fees since being in Phoenix?

A. I cannot think of any. It would be on the books here if I have.

Q. You have received nothing that would not show on the books of Armstrong, Lewis & Kramer? A. I don't think so.

Q. From Globe companies or from interests you have there? A. I don't think so.

These objectors charge at the time said questions were asked and answered by said bankrupt he had been first duly sworn by said referee and said testimony was given under oath; that the answers above set forth were false and untrue and knowingly and fraudulently made, for the purpose of concealing from the trustee his true income and receipts.

X.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Tenth Specification of objections to bankrupt's discharge, which was as follows: [758]

That the bankrupt has committed an offense punishable by imprisonment under the Bankruptcy Act in that in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy, as follows: That he knowingly and fraudulently made a false oath in answering the following questions propounded to him under ex-

amination at the first meeting of creditors, as answered by him:

Q. When was this $500 payment received from Mr. Goswick? A. In December, 1927.

Q. Have you ever received any other amounts from him?

A. Only for fees; they would go into the firm.

Q. This $500 was not fees? A. No.

Q. Have you any interest in these options of Goswick's? A. No.

Q. You do not expect to receive any other amounts from him other than this $500?

A. No.

Q. If he should send you any more money you would be surprised, would you?

A. I most certainly would.

These objectors charge at the time said questions were asked and answered by said bankrupt he had been first duly sworn by said referee and said testimony was given under oath; that the answers above set forth were false and untrue and [759] knowingly and fraudulently made, for the purpose of concealing from the trustee his true income and receipts.

XI.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Eleventh Specification of objections to bankrupt's discharge, which was as follows:

That the bankrupt has committed an offense punishable by imprisonment under the Bankruptcy

Act in that he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy, as follows:

(a) That on, to wit, the 17th day of April, 1928, the said bankrupt subscribed and swore to an oath to Schedule A (being the schedule of his assets filed herein) before R. E. Conger, a notary public in and for the county of Maricopa, State of Arizona, in which he did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy, which schedule was on the 17th day of April, 1928, filed with the United States District Court for the District of Arizona, said schedule showing only one creditor of said bankrupt, namely J. J. Mackay, and that said oath to said schedule was false as to a material fact in that in truth and in fact there was another creditor of said bankrupt, namely, the First National Bank of Arizona, which held a promissory note of said bankrupt for the sum of $750 dated April 7, 1928, which promissory note was at that time unpaid and secured by a chattel mortgage on one 1928 Hudson sedan, Motor Number [760] 495579, Serial Number 799342, executed by said bankrupt on the 7th day of April, 1928, said car not being scheduled as an asset of said estate.

(b) That on, to wit, the 17th day of April, 1928, the said bankrupt did knowingly and

fraudulently before R. E. Conger, a notary public in and for the county of Maricopa, State of Arizona, subscribe to and make a false oath to Schedule B of the schedule of his liability in this estate, in that after being duly sworn he did declare the said schedule to be a statement of all his assets, both real and personal, in accordance with the acts of Congress relating to bankruptcy, in that in said Schedule B, he listed as his entire assets, real estate of the value of Two Hundred Fifty ($250.00) Dollars; books, prints, and pictures of the value of Twenty-five ($25.00) Dollars; deposits of money in bank and elsewhere, of Fifteen and 67/100 ($15.67) Dollars; and certain mining stocks listed as of no market value; making a total of nonexempt assets listed of Two Hundred Ninety and 67/100 ($290.67) Dollars; and exempt property as follows: household goods of the value of Two Hundred Fifty ($250.00) Dollars, and other personal property, consisting of a law library and office fixtures of the value of Seven Hundred Fifty ($750.00) Dollars, when in truth and in fact his said assets at that time were in excess of the sum of, to wit, Thirty Thousand ($30,000.00) Dollars; the omissions of assets from said schedule being more particularly described as follows, to wit:

(1) One Hudson car described as 1928 Hudson [761] Sedan, Motor #495579, Serial #799342, of the value of $900.00.

(2) One life insurance policy upon the life of the bankrupt as follows: Policy #3310053, issued by the Mutual Life Insurance Company of New York, dated May 25, 1924, of the cash surrender value of $746.85.

(3) Savings account in the First National Bank of Arizona at Phoenix, Arizona, being Account #19061, in the name of Jessie M. Shute, wife of said bankrupt, against which account said bankrupt retained the right to check, the said savings account containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of $1162.30.

(4) One phonograph of the value of $200.00.

(5) The sum of $250.00, deposited by the bankrupt with one Arthur La Prade during the month of December, 1927.

(6) One Essex car described as Essex Coach, Serial #640003, of the value of $600.00.

(7) The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, $5,000.00.

(8) One certain contract entered into by and between one Wesley Goswick and the bankrupt on or about the 8th day of December, 1926, under and by virtue of the terms of which the [762] said bankrupt was to receive the sum of Twenty Thousand ($20,000.00) Dollars out of the proceeds of the sale by said Wesley Gos-

wick to one L. E. Foster of a cinnabar mining property for the sum of Two Hundred Thousand ($200,000.00) Dollars, said contract between said Wesley Goswick and said bankrupt in said sum of $20,000.00 being payable to said bankrupt in an amount of ten (10%) per cent of the payments made by the purchaser to said Wesley Goswick at the time said payments were made.

(9) An undivided partnership interest in the assets of the firm of Armstrong, Lewis & Kramer, of which firm the said bankrupt is a member; the interest of the said bankrupt in the assets of said firm being of the estimated value of Five Thousand Dollars ($5,000.00).

That said oath to said Schedule B was false as to a material fact in that said assets of said bankrupt so omitted from said schedule were assets belonging to said bankrupt estate, the existence of which said bankrupt was by said omission concealing from the officers of the Bankruptcy Court in charge of said proceeding.

(c) That on, to wit, the 7th day of May, 1928, the said bankrupt did knowingly and fraudulently before one R. E. Conger, a Notary Public in and for the County of Maricopa, State of Arizona, subscribe to and make a false oath to Schedule B of the Amended Schedule of his liabilities in this estate, which said amended schedule was on the 8th day of May, [763] 1928, filed with the United States District Court of Arizona; in that after being duly sworn said

bankrupt did declare the said amended schedule to be a statement of all his assets, both real and personal, and that in said Schedule B of said amended schedule he listed as his entire assets real estate of the value of Two Hundred Fifty ($250.00) Dollars; books, prints and pictures of the value of Twenty-five ($25.00) Dollars; deposits of money in banks and elsewhere, Fifteen and 67/100 ($15.67) Dollars; certain mining stocks listed as of no market value, and a 25% interest in the net earnings of Armstrong, Lewis & Kramer, as shown on the books of the firm from the 1st day of April, 1927, the value of said interest not being stated; and a 20% interest in the office equipment of Armstrong, Lewis & Kramer of the value of Seven Hundred Sixty-nine and 15/100 ($769.15) Dollars; making a total value of non-exempt assets listed of One Thousand Fifty-nine and 82/100 ($1059.82) Dollars, exclusive of said partnership interest, and exempt property as follows: Household goods of the value of Two Hundred Fifty ($250.00) Dollars; and other personal property consisting of a law library and office fixtures of the value of Seven Hundred Fifty ($750.00) Dollars; when in truth and in fact his said assets at that time were in excess of the sum of Thirty Thousand ($30,000.00) Dollars; the omissions of assets from said schedule being more particularly described as follows, to wit:

(1) One Hudson car described as 1928 Hud-

son Sedan, Motor #495579, Serial #799342, of the [764] value of $900.00.

(2) One life insurance policy upon the life of the bankrupt as follows: Policy #3310053, issued by the Mutual Life Insurance Company of New York, dated May 25, 1924, of the cash surrender value of $746.85.

(3) Savings account in the First National Bank of Arizona at Phoenix, Arizona, being Account #19061, in the name of Jessie M. Shute, wife of said bankrupt, against which account said bankrupt retained the right to check, said savings account containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of $1162.30.

(4) One phonograph of the value of $200.00.

(5) The sum of $250.00, deposited by the bankrupt with one Arthur LaPrade during the month of December, 1927.

(6) One Essex car described as Essex Coach, Serial #640003, of the value of $600.00.

(7) The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, $5,000.00.

(8) One certain contract entered into by and between one Wesley Goswick and the bankrupt on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of [765]

Twenty Thousand ($20,000.00) Dollars out of the proceeds of the sale by said Wesley Goswick to one L. E. Foster of a cinnabar mining property for the sum of Two Hundred Thousand ($200,000.00) Dollars, said contract between said Wesley Goswick and said bankrupt in said sum of $20,000.00 being payable to said bankrupt in an amount of ten (10%) per cent of the payments made by the purchaser to said Wesley Goswick at the time said payments were made.

That said oath to said amended schedule B was false as to a material fact in that said assets of said bankrupt so omitted from his said schedule were assets belonging to said bankrupt estate, the existence of which said bankrupt was by said omission concealing from the officers of the Bankruptcy Court in charge of said proceeding.

The trustee and objecting creditor charge the fact to be that said bankrupt has sworn falsely with reference to said matters so knowingly and fraudulently omitted from said schedules.

XII.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Twelfth Specification of objections to bankrupt's discharge, which was as follows:

That the bankrupt has committed an offense punishable by imprisonment under the Bankruptcy Act, in that he has knowingly and fraudulently after the

filing of his petition in bankruptcy herein, withheld from the trustee in the bankruptcy estate documents and papers affecting and relating to the property and [766] affairs of the bankrupt, to the possession of which the trustee is entitled, and the possession of which is necessary to the trustee for the purpose of collecting in the assets of the bankrupt estate, said documents and papers consisting of:

(a) One lease in which the bankrupt is the lessee of a residence and lot located at 66 West Lynwood Street, in the City of Phoenix, County of Maricopa, State and District of Arizona, the said lease having had paid thereon by said bankrupt prior to the filing of the petition in bankruptcy herein the sum of One Hundred Fifty ($150.00) Dollars for unexpired rent thereon (with the exception of two days rent at the rate of Seventy-five ($75.00) Dollars per month), the same being an asset of said estate, and the title to said lease having passed to the trustee by operation of law as of the date of the filing of the bankrupt's petition in bankruptcy herein.

(b) One promissory note signed by Joseph E. Noble, dated the 18th day of October, 1927, for the principal sum of Twelve Hundred ($1,200.00) Dollars, payable to the First National Bank of Arizona, signed by said Joseph E. Noble as principal, and by G. W. Shute, the bankrupt, as surety, which said promissory note was on or about the 27th day of February,

1928, paid by said bankrupt, and which promissory note is an asset of the bankrupt estate, title to which passed to the trustee herein as of the date of the filing of the petition in bankruptcy herein by the said bankrupt. [767]

XIII.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Thirteenth Specification of objections to bankrupt's discharge, which was as follows:

That said bankrupt has failed to keep books of accounts or records from which his financial condition and business transactions might be ascertained, and has concealed records from which his business transactions might be ascertained.

XIV.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Fourteenth Specification of objections to bankrupt's discharge, which was as follows:

That at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy, he transferred real property owned by himself from himself to his wife, with intent to hinder, delay and defraud his creditors, such property being situated in the county of Gila, State of Arizona, and more particularly described as follows, to wit: Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite; that

said transfer was accomplished in the following manner, to wit: That the said bankrupt was the owner of the above-described property as the community property of himself and wife ever since the 20th day of December, 1920, when the same was acquired by him by the payment therefor of the consideration for the purchase thereof from the community funds of himself and his wife, Jessie M. Shute, acquired by said bankrupt after his marriage to her, and by the giving of a [768] joint promissory note and mortgage as a part of the consideration for the said purchase of one Mary E. Holmes for the sum of Thirty-five Hundred ($3500.00) Dollars, which promissory note and mortgage was a community liability. That in, to wit, the early part of the year 1928, the said bankrupt, while insolvent within the meaning and intent of the Bankruptcy Act, and not having sufficient property to pay his debts, transferred the above-described property to his wife, Jessie M. Shute, by disclaiming any interest therein in her favor and by relinquishing possession thereof to her, all of which was done in contemplation of bankruptcy and with intent to hinder, delay and defraud his creditors. That subsequent to the filing of his said petition in bankruptcy he has continued to aid his wife, the said Jessie M. Shute, in withholding possession of said premises from the trustee of the said estate, and employed counsel for her to prevent the delivery of same to the trustee

herein and to prevent the payment of the rents thereof to the trustee herein, and by filing a declaration of homestead upon said premises signed by the said Jessie M. Shute subsequent to the filing of said petition in bankruptcy of record in the office of the County Recorder of Gila County, thereby clouding the title of said trustee and carrying out the disclaimer and relinquishment of his right and title to the real estate and improvements as hereinbefore set forth in favor of his wife.

XV.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Fifteenth Specification of objections to bankrupt's discharge, which was [769] as follows:

That at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy he transferred personal property owned by himself to one A. E. England, with intent to hinder, delay and defraud his creditors, said property consisting of one automobile of the value of, to wit, Nine Hundred ($900.00) Dollars, and more particularly described as follows, to wit: 1928 Hudson Sedan, Motor Number 495579, Serial Number 799342; that said transfer was accomplished by delivering the said automobile to the said A. E. England to hold and keep as his own, and to store the same in the building occu-

pied by the A. E. England Motors in the City of Phoenix, Arizona; that said transfer was made in the early part of the year 1928 and was made in contemplation of bankruptcy; that said automobile remained in the custody of the said A. E. England up to and subsequent to the adjudication in bankruptcy of the bankrupt until a time some weeks subsequent to said adjudication, when the same was purchased from the trustee herein by the bankrupt for the sum of Nine Hundred ($900.00) Dollars.

XVI.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Sixteenth Specification of objections to bankrupt's discharge, which was as follows:

That at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy, he concealed and permitted to be concealed personal property belonging to said bankrupt and bankrupt estate, more particularly described [770] as follows: A savings account numbered 19061 in the First National Bank of Arizona, standing in the name of Jessie M. Shute but being the community property of said bankrupt and said Jessie M. Shute, and consisting of funds acquired after marriage by the said bankrupt, of the sum of Eleven Hundred Sixty-two and 30/100 ($1162.30) Dollars, $1000.00 or more of which sum was by the said bankrupt withdrawn

or permitted to be withdrawn from the said account after the same had been the subject of testimony and examination at a meeting of the creditors of said bankrupt held on the 29th day of May, 1928, for the purpose of placing the same beyond the reach of the trustee herein and of the Court of Bankruptcy, and which sum has been secreted and concealed from the trustee herein and the officers of the Court of Bankruptcy, thereby depriving the estate of said bankrupt of said $1,000.00, with intent to hinder, delay and defraud the creditors of said bankrupt.

XVII.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Seventeenth Specification of objections to bankrupt's discharge, which was as follows:

That at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy, he concealed and permitted to be concealed personal property belonging to said bankrupt and said bankrupt estate, said concealment being more particularly described as follows: By receiving and secreting in, to wit, the month of June, 1928, the sum of, to wit, Eight Thousand ($8,000.00) Dollars, paid to said bankrupt by one Wesley Goswick upon a contract [771] entered into by said Goswick and said bankrupt prior to the filing of the petition in bankruptcy by the bankrupt herein, which said

contract passed by operation of law to the trustee herein at the time these proceedings were instituted, and which sum of Eight Thousand ($8,000.00) Dollars was the property of the trustee herein and collected by the said bankrupt without the knowledge or consent of the trustee herein, and said bankrupt has ever since said time concealed the same from the trustee and the officers of the Bankruptcy Court with intent to hinder, delay and defraud the creditors of said bankrupt.

XVIII.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Eighteenth Specification of objections to bankrupt's discharge, which was as follows:

That in the course of the proceedings in bankruptcy, said bankrupt refused to obey a lawful order of the Court, to wit, the order of said Bankruptcy Court made on the 1st day of May, 1928, requiring said bankrupt to file new schedules or to so amend said schedules theretofore filed by him to conform to the facts and provisions of the Bankruptcy Act; that said bankrupt subsequent to said order filed what was termed an amended schedule, but that said amended schedule did not comply with said order of Court dated May 1, 1928, and did not conform to the facts and the provisions of the Bankruptcy Act in that said bankrupt knowingly and fraudulently omitted from said

amended schedule the following assets belonging to said bankrupt estate, to wit:

(1) One Hudson car described as 1928 Hudson Sedan, [772] Motor #495579, Serial #799342, of the value of $900.00.

(2) One life insurance policy upon the life of the bankrupt as follows, Policy #3310053, issued by the Mutual Life Insurance Company of New York, dated May 25th, 1924, of the cash surrender value of $746.85.

(3) Savings account in the First National Bank of Arizona at Phoenix, Arizona, being account #19061, in the name of Jessie M. Shute, wife of said bankrupt, against which account said bankrupt retained the right to check, said savings account containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of $1162.30.

(4) One phonograph of the value of $200.00.

(5) The sum of $250.00, deposited by the bankrupt with one Arthur LaPrade during the month of December, 1927.

(6) One Essex car described as Essex Coach, Serial #640003, of the value of $600.00.

(7) The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, $5,000.00.

(8) One certain contract entered into by

and between one Wesley Goswick and the bankrupt on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of Twenty Thousand ($20,000.00) Dollars out of the proceeds of the sale by said [773] Wesley Goswick to one L. E. Foster of a cinnabar mining property for the sum of Two Hundred Thousand ($200,000.00) Dollars, said contract between said Wesley Goswick and said bankrupt in said sum of $20,000.00 being payable to said bankrupt in an amount of ten (10%) per cent of the payments made by the purchaser to said Wesley Goswick at the time said payments were made.

XIX.

That the United States District Court for the District of Arizona erred in overruling and not sustaining the Nineteenth Specification of objections to bankrupt's discharge, which was as follows:

That he failed to explain satisfactorily losses of assets and deficiency of assets to meet his liability in this, that for the period commencing January 1, 1927, up to and including the date of the filing of his petition in bankruptcy herein, to wit, the 17th day of April, 1928, said bankrupt had cash assets in the form of income and other amounts received by him during said period, of an amount of not less than Twenty-one Thousand Six Hundred Ninety-five and 20/100 ($21,695.20) Dollars; and that after de-

ducting from said amount all expenditures and disbursements thereof testified to by said bankrupt under examination or revealed from such statements and data as have been produced by him in said proceedings, there still remains an amount of not less than Seven Thousand ($7,000.00) Dollars received by said bankrupt during said period of time which is totally unaccounted for, and the disappearance of which said bankrupt has failed to explain satisfactorily or at all. [774]

XX.

That the United States District Court for the District of Arizona erred in finding as a fact (if such be its finding) that none of the Specifications of objections to the bankrupt's discharge have been sustained in that there was no substantial evidence or any evidence to sustain such finding, and that the uncontradicted evidence shows that each of said Specifications has been sustained.

XXI.

That the United States District Court for the District of Arizona erred in finding as a fact (if such be its finding) that there has been no fraud committed by the bankrupt, and that he is not guilty of false swearing or of any act which would bar his discharge in that there is no substantial evidence nor any evidence that would sustain such finding, and the uncontradicted evidence shows that the

bankrupt was guilty of false swearing and of acts which would bar his discharge.

XXII.

That the United States District Court for the District of Arizona erred in rendering judgment that each and all objections to the bankrupt's discharge are overruled upon the ground that there is no substantial evidence nor any evidence to sustain such judgment, nor any finding of fact upon which said judgment may be predicated, and that the uncontradicted evidence shows that each and all of said objections should be sustained.

XXIII.

That the United States District Court for the District of Arizona erred in granting the bankrupt's petition for discharge upon the ground that there is no substantial evidence nor any evidence to sustain such judgment granting such discharge nor any finding of fact upon which such judgment for discharge may be predicated. [775]

XXIV.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the First Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to

the bankrupt's discharge should have been sustained.

XXV.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Second Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXVI.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Third Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXVII.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Fourth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no [776] substantial evidence nor any evidence to sustain

such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXVIII.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Fifth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXIX.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Sixth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXX.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Seventh Specification of grounds of opposition to bankrupt's discharge was

not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained. [777]

XXXI.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Eighth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXXII.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Ninth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXXIII.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Tenth Specification of grounds

of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXXIV.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Eleventh Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no [778] substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXXV.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Twelfth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXXVI.

That the United States District Court for the District of Arizona erred in its finding (if such be

its finding) that the Thirteenth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXXVII.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Fourteenth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained. [779]

XXXVIII.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Fifteenth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XXXIX.

That the United States District Court for the

District of Arizona erred in its finding (if such be its finding) that the Sixteenth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XL.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Seventeenth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XLI.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Eighteenth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no [780] substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XLII.

That the United States District Court for the District of Arizona erred in its finding (if such be its finding) that the Nineteenth Specification of grounds of opposition to bankrupt's discharge was not sustained upon the ground that there was no substantial evidence nor any evidence to sustain such finding, and that the uncontradicted evidence shows that said Specification of grounds of opposition to the bankrupt's discharge should have been sustained.

XLIII.

That the United States District Court for the District of Arizona erred in sustaining an objection to the following question propounded by the objectors to Witness George Wilson, testifying as to the time of an indebtedness due by the bankrupt:

> "Q. How long had that indebtedness been owing?"

the answer to which would have been that said indebtedness was owing ever since the year 1912.

The purpose of said question being to prove the insolvency of the bankrupt at the time of the acquisition of the property known as the Globe property. Exception to ruling was granted.

XLIV.

That the United States District Court for the District of Arizona erred in sustaining an objection to the question asked on cross-examination by objecting creditor of Thomas W. Nealon, who had

been called as a witness for the bankrupt, as follows:

"Q. Now in reference to the specification First (c) first state whether or not—" [781]

as being an improper limitation upon the right of cross-examination, exception to said ruling being granted.

XLV.

That the United States District Court for the District of Arizona erred in limiting the cross-examination of Thomas W. Nealon, called as a witness by the bankrupt, as to questions to be propounded concerning each of the other specifications of objections to the discharge of the bankrupt, the request for such examination made after the sustaining of the objection referred to in the last assignment of error being as follows:

Mr. DYER.—Your Honor, I wish to ask the same question as regards each specification.

The COURT.—That is the reason I sustained the objection. I anticipated that.

said objection being sustained upon the ground only that it was improper cross-examination. Exception was granted as to ruling on each specification.

WHEREFORE, the said trustee and the said objecting creditor (appellants) pray that said order and decree of the District Court of the United States for the District of Arizona be reversed, and that said District Court for the District of Arizona be ordered to enter an order and decree reversing

the order entered in said court in said cause granting said bankrupt a discharge.

THOMAS W. NEALON,
Trustee.

J. J. MACKAY,
By JOHN L. DYER,
ALICE M. BIRDSALL,
Attorneys for Objecting Creditor,
Appellants.

[Endorsed]: Filed Feb. 9, 1929. [782]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING BOND.

Now, on this 9th day of February, 1929, comes Thomas W. Nealon, trustee in bankruptcy in the above-entitled matter, and J. J. Mackay, creditor in the above-entitled matter, and present to the Court their petition for allowance of an appeal intended to be urged by them and that proper transcript of record and proceedings and papers upon which order of Court of January 12, 1929, was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such order or other proceedings may be had as may be proper in the premises, and in consideration thereof,—

IT IS ORDERED that the appeal be and hereby is allowed in the above-entitled cause, as prayed for

in the petition as to said trustee, and as to said creditor upon his filing a bond for costs in the sum of Two Hundred Fifty Dollars ($250.00) to be approved by the Court.

WM. H. SAWTELLE,
District Judge.

[Endorsed]: Filed Feb. 9, 1929. [783]

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Thomas W. Nealon, trustee, and J. J. Mackay, objecting creditor, as principals, and Fidelity & Deposit Company of Maryland, a corporation, as surety, are held and firmly bound unto the above-named George W. Shute, bankrupt, of Phoenix, Arizona, in the sum of Two Hundred and Fifty Dollars ($250.00) for the payment of which well and truly to be made we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of February, 1929.

WHEREAS, the above-named Thomas W. Nealon, trustee, and J. J. Mackay, objecting creditor, have prosecuted or are about to prosecute an appeal to the United States Circuit Court of Ap-

peals for the Ninth Circuit, to reverse the final judgment granting the said George W. Shute a discharge in the above-entitled proceeding entered in the office of the Clerk of the United States District Court for the District of Arizona, on the 12th day of January, 1929.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Thomas W. Nealon, trustee, and J. J. Mackay, objecting creditor, shall prosecute their appeal to [784] effect, and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) THOMAS W. NEALON. (L. S.)
(Signed) J. J. MACKAY. (L. S.)
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By (Signed) D. E. GORTON,
Attorney-in-fact.

Attest: (Signed) F. E. SCRIVNER, (Seal)
Signed, sealed and delivered in the presence of:

Approved.
(Signed) WM. H. SAWTELLE,
U. S. District Judge.

[Endorsed]: Filed Feb. 9, 1929. [785]

[Title of Court and Cause.]

ORDER ENLARGING APPELLANT'S TIME TO AND INCLUDING AUGUST 5, 1929, FOR FILING RECORD AND DOCKETING CASE WITH CLERK OF U. S. CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

For good cause shown the application of appellants for enlargement of time in which to file the record and docket the case with the Clerk of the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California, is hereby granted, and time for filing the record and docketing the case with the Clerk of the United States Circuit Court of Appeals, 9th Circuit, by said appellants, is hereby extended and enlarged up to and including the 5th day of August, 1929.

Done in open court this 28th day of February, 1929.

WM. H. SAWTELLE,
Judge United States District Court.

True copy.

[Endorsed]: Filed Feb. 28, 1929. [786]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the Clerk of

the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in the above-entitled cause, and you shall include in said transcript the following pleadings, papers and proceedings on file, to wit:

1. Voluntary petition in bankruptcy.
2. Bankrupt's application for discharge.
3. Appearance of trustee in opposition to discharge.
4. Appearance of objecting creditor in opposition to discharge.
5. Orders extending time for filing specifications of grounds of opposition to discharge by trustee and objecting creditor.
6. Creditor's specification of grounds of opposition to discharge.
7. Trustee's specification of grounds of opposition to discharge.
8. Findings, judgment and order of Court. [787]
9. Order granting discharge.
10. Notice of appeal. (Minute Entry.)
11. Petition for appeal.
12. Assignments of error with acceptance of service.
13. Citation to appellee and return of service thereof.
14. Order allowing appeal and fixing bond.
15. Bond on appeal with approval thereof.
16. Statement of evidence.
17. Notice of lodging statement of evidence and praecipe.

18. Praecipe for transcript of record.

19. Order enlarging appellants' time for preparation of record and filing of praecipe, also time of appellee.

20. Order enlarging appellants' time for filing record and docketing case with Clerk of United States Circuit Court of Appeals, Ninth Circuit.

21. Application for order of transmittal of original exhibit.

22. Order for transmittal of original exhibit.

23. Trustee's and objecting creditor's original exhibit No. 31.

24. Order approving statement of evidence.

25. All minute entries made herein.

26. All other orders of court made herein.

27. Clerk's certificate to transcript of record. [788]

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 16th day of April, 1929.

THOMAS W. NEALON,
Trustee and Appellant.
JOHN L. DYER,
ALICE M. BIRDSALL,
Attorneys for Objecting Creditor and Appellant.

Received copy of the within praecipe this 16th day of April, 1929.

JAMES R. MOORE,
ORME LEWIS,
Attorneys for Bankrupt and Appellee.

[Endorsed]: Filed Apr. 16, 1929. [789]

In the District Court of the United States in and for the District of Arizona.

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of the United States, for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the matter of George W. Shute, Bankrupt, numbered B–486–Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 792, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of $148.00, and that the said sum has been paid to me by counsel for Trustee and Objecting Creditor.

I further certify that the original citation issued in the said cause is hereto attached and made a part of this record.

WITNESS my hand and the seal of said Court this 12th day of September, 1929.

[Seal] C. R. McFALL,
Clerk.
By J. Lee Baker,
J. LEE BAKER,
Chief Deputy Clerk. [790]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States to George W. Shute, Bankrupt, GREETING:

You are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, California, thirty (30) days from and after the day this citation bears date, pursuant to the appeal duly authorized and filed in the Clerk's office of the District Court of the United States for the District of Arizona, wherein Thomas W. Nealon, trustee, and J. J. Mackay, creditor, all of Phoenix, Arizona, are appellants, and George W. Shute is appellee, to show cause if any there be, why the order, rulings and decree in said appeal mentioned should not be

reversed and corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. SAWTELLE, United States Judge for the District of Arizona, on the 9 day of February, 1929.

[Seal] WM. H. SAWTELLE,
District Judge.

RETURN ON SERVICE OF WRIT.

United States of America,
——— District of Arizona,—ss.

I hereby certify and return that I served the annexed Citation on Appeal on the therein named George W. Shute, by James R. Moore, attorney at law, together with the following: Assignment in error; petition for appeal to Court of Appeals for order granting discharge of bankrupt; order allowing appeal and fixing bond and bond for appeal, by handing to and leaving a true and correct copy thereof with above-enumerated papers in same case, personally, at Phoenix, in said District, on the 11th day of February, A. D. 1929.

G. A. MAUK,
U. S. Marshal.
By J. W. McCormick,
Deputy.

[Endorsed]: Citation on Appeal. Filed Feb. 11, 1929. [791]

[Endorsed]: No. 5949. United States Circuit Court of Appeals for the Ninth Circuit. Thomas W. Nealon, Trustee, and J. J. Mackay, Creditor, Appellants, vs. George W. Shute, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed September 17, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Frank H. Schmid,

Deputy Clerk.